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LIPPINCOTT'S
NURSING MANUALS

PRINCIPLES OF ETHICS

BY
DOM THOMAS V. MOORE, PH.D., M.D.

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PREFACE

In the spring of 1933 the author of this text assigned as a master's dissertation to Sister Rose Helene Vaughn of the Sisters of St. Joseph the task of investigating the character and the actual incidence of moral problems as they occur in the life of the nurse. The investigation was made by having a number of nurses, student and graduate, keep diaries in which they would record their daily moral problems and difficulties. Diaries were returned by ninety-five nurses, some having been kept for a period of three months. The items mentioned consisted of 2,265 moral problems, 67 problems of etiquette and 110 questions as to the proper course of action in certain situations.

The evident perplexity of many of these young women about moral questions of a very simple character made it perfectly clear that they were in real need of understanding the fundamental principles of moral philosophy.

It was thought that a work on ethics which would throw light on the actual problems of the nurse's life would be a contribution to the field of nursing education.

The result is the present work. It was found necessary to cover most of the field of applied ethics in order to establish the principles needed to give a sound solution to the problems of moral life which these nurses had encountered in their actual experience. Only a few chapters had to be added to make the work a general text of practical ethics.

In writing the text the attempt was made not only to lay down principles of right and wrong but also to give a sound reason why the principles expressed must govern human conduct. The principles themselves are given at the end of the chapters as a kind of summary of the contents. Follow-

ing the principles a number of problems are given, in main derived from the diaries of the nurses.

Some problems have been added from various sources besides the diaries. In general, however, the problems are stated in the words of the diaries without any attempt to polish them into better literary form.

Many of the problems are mere trivialities and may be looked upon with contempt by one who is searching for difficult *casus conscientiae*. One should remember, however, that little problems make up the greater portion of one's moral experience; and just as these little problems worried the minds of those who kept the diaries, they will probably constitute a considerable proportion of difficulties as actually met with in the practical life of those who study ethics. Those who wish to add to them will find a number in the very excellent little work of Sister John Gabriel.¹

The text itself will be found to cover the general field of a course in ethics. Considered as a text-book on ethics, the work differs from other texts in the abundance of problems cited for discussion. Works dealing with moral philosophy consist mainly of a theoretical discussion, and the teacher must supply practical problems for solution from his own experience. Too often the application of principles to problems is neglected and the student sees no relation between ethics and his daily life.

It is hoped that as a general text on ethics the work will supply a need as yet unfulfilled, stimulating the student to govern his own conduct with intelligence and solve his moral problems by fidelity to principles of conduct which he can establish by reason.

My thanks are due in the first place to Sister Rose Helene Vaughn for the privilege of using the data of her valuable dissertation as the basis of this work. My gratitude is also

¹ *Professional Problems*. Philadelphia and London: 1932. Pp. 158.

due to Sister Olivia and Mrs. Eugenia Spalding, R.N., M.A., of the School of Nursing Education at this University for their kindly suggestions and criticisms. I wish also to thank Dean John McDill Fox and Mr. James A. Condrick of the School of Law of the Catholic University of America for suggestions in regard to the legal problems discussed; Miss Ruth Holmes, the Librarian of the Law Library, for assistance in the legal references; and Miss Gertrude Reiman for valuable aid in preparing the manuscript for the press and for making the indices. Finally, my special thanks are due to the censors, Monsignor Edward A. Pace, Monsignor John A. Ryan and Dom Ninian MacDonald, for their kindly and helpful criticisms.

THOMAS VERNER MOORE.

*St. Anselm's Priory,
Washington, D. C.
December 8, 1934.*

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PART ONE
GENERAL PRINCIPLES

CONCEPT OF ETHICS AND THE MORAL END
LAW AND ITS BINDING FORCE
MORAL RESPONSIBILITY
CONCERNING VIRTUE AND VICE IN GENERAL

PRINCIPLES OF ETHICS

PART ONE

GENERAL PRINCIPLES

CHAPTER 1

THE CONCEPT OF ETHICS AND THE MORAL END

Concept of Ethics. Ethics is the philosophy of conduct, and philosophy is the knowledge of things in their ultimate causes. Ethics, therefore, lays down ultimate principles and applies them to the management of conduct.

By conduct is here understood not only external behavior, but all the internal and external acts involved in conduct from the idea of an action to its final execution, that is to say, the type of behavior specific to a human being. Human beings alone of all the living things on earth create careers for themselves by a rational view of the possibilities of life, a choice among its many opportunities, and purposeful effort to live out life and govern their actions in virtue of a preconceived plan. So human conduct is action with an insight and a purpose, and ethics is the philosophy of human conduct.

The End of Human Conduct. If conduct involves insight and purpose the first problem that comes before our mind is whether or not human beings as such have a specific purpose or function in life.

The main purpose of any object must be to carry out that function for which it is peculiarly adapted. The function of a knife is to cut, though it might be used as a paper weight.

And so, although a human being can be used in a number of ways, if he has any peculiar function that no other class of beings on earth performs then this must be the peculiar end and purpose of human beings in general.

Many other organisms besides man eat and sleep and propagate their species. The end and function of man cannot lie in those things that other organisms do and enjoy, if he has a function that is peculiar to himself and incapable of being performed by any other organism.

Human beings alone have intelligence and the power of interpreting the world in which they live. This knowledge and interpretation of the universe in which we live and of our own personal place in it, and a conscientious effort to use all our abilities to do our part in our own place, this must be the function of a human being and the ethical end of man. Briefly expressed, our end is to know and then to do, that is, act in the light of the truth that is known.

Ethics primarily concerns action. It supposes that an individual has used his intelligence in interpreting the world in which he lives, and then endeavors to work out a philosophy of conduct in which his actions will be laid down in the light of his insight into the meaning of life.

Basis of Theistic Ethics. The interpretation of life which lies at the basis of ethics as presented in this volume is frankly theistic. A theism is supposed according to which God is the utterly transcendent and supreme intelligence in a universe of intelligent beings. Though the word "supposed" is made use of, this does not imply that theism must be supposed and cannot be proved, but only that theodicy is a science by itself and is the basis of a theistic ethics.

As a matter of fact, it requires no great feat of intelligence to see that the clock which is running down must at some time have been wound up. And that is precisely what nature is, a vast mechanism. Science tells us that it is using up its

energy and that at some time or other all life and even all phenomena must cease in the "heat death" of the universe. It is clear, too, that, given an effect, there must be a cause and if all that exists now in nature has come from some previous set or condition of things, then all that now exists in nature is a vast complex of effects; and this vast complex of effects must go back to the Cause of causes that never was and never could be an effect. This Cause of causes must be a Being of vast intelligence incomparably superior to the greatest human intellects which must labor for years to get a little scientific insight into a few of nature's tiny mechanisms. But the Cause of causes brought about and laid down the laws by which the universe has been governed from the ultimate beginning until today in which we live and tomorrow in which all things will attain their final consummation.

Physical laws do not constitute the only law. It is inconceivable that God should be the supreme intelligence in a universe of intelligent beings and should direct nature and nevertheless should leave human intelligence without guidance and direction to an end in which history will find its ultimate resolution.

The Value of Life. If theism is the true philosophy of life all history has a meaning and a value, and society is undergoing a process of development which will terminate in the attainment of a goal worthy of the Infinite Intelligence that shimmers through nature to the mind of man. All conscious and intelligent human beings must have singly and individually a purpose and a value. They are persons and every person has a personal end. Persons cannot be merely added and weighed as masses of inert lifeless material. Each individual therefore has some work to perform in the vast scheme of things. Apparently one is allowed to choose that work within wide limits, but once having chosen one

must settle down to fulfill his function in his own sphere and in the period of time in which he lives.

One who is aware of the implications of theism will consciously conceive of his life as a service to God. This service will be his supreme end. He will be glad to serve his fellow men, but that service will be recognized as ultimately a service done to God and be all the more stable because it is referred to God.

Unfortunately many, who are at least nominally theists, make no conscious reference of their lives to God. Quite often they feel like devoting their lives to the service of suffering humanity, but without rising consciously from the service of man to the service of God by helping one's fellow men. Others again do not even think of making use of their lives to be of service to anyone at all, and consider merely their own personal pleasure.

It is a very important moment in life when one becomes explicitly conscious of one's duty to do God's work in the world and seriously sets about performing this duty of all duties. Much that appeared meaningless will take on a new significance, what seemed intolerable will be borne with patience, and various mental ills will be averted.

It is easily seen that one who has the living ideal of serving God in her profession as a nurse by helping the sick has an ideal which gives significance to life and prevents the labor of the day from becoming a hopeless burden and meaningless drudgery.

REASONS FOR CHOOSING A PROFESSION

(a) **Religious Motives.** Do nurses of our day actually make any such reference of their work to the service of God?

Of seventy-two nurses in various parts of the country who gave information as to their motives of taking up training, nine, or 12.5 per cent., made specific mention of a desire to

serve God in their work as nurses or of some religious motive, as to be like Christ. It may be that others had a religious motive but did not mention it; however it would seem that had such a motive been a powerful element in their lives and conduct it would have found expression.

It is encouraging on the one hand that a religious philosophy of life has not entirely disappeared from nursing ideals; and on the other hand it is to be regretted that so many will lack the support of religion when the enthusiasm of a new experience dies away, and they are left with the routine work of their profession and the uninteresting burden of the day unenlightened by the insight of idealism.

The following quotations from the diaries illustrate how some have lived out their religious ideals in entering training. One student nurse writes as follows:

"Ever since I can remember I have always wanted to be a nurse. When I was small I would operate on my dolls and would make scrap-books with pictures of nurses. Now that I am older I want to help our Lord to help and cure His people. I enjoy the work and feel really happy when I am doing deeds for others, making their pain less, etc. I think nursing and a nurse, herself, are the most wonderful gifts to mankind. A nurse all dressed in pure white with a smile and a few words means everything. I am only in my first year, but I wouldn't give it up for anything."

A second year student writes as follows:

"Why I have chosen nursing as my profession: because it is a profession that has more similarity to the work Christ did while here on earth. I have always had the desire to be among the sick and poor. I felt I was called for this work. This was the only profession

I could see in which Faith, Hope and Charity would be before the eyes of the mind continuously. I felt in the work I could help every class of people, especially during sickness when sometimes your best friend forgets you.

"My attitude toward nursing today: it is the highest profession a girl can choose beside the religious life. The public is looking up to the work with more respect and admiring those who are able to carry on this work. It is being taken up by a more educated class of people. It helps to bring out the true character of each individual in this work. Nurses are instructed about the human anatomy along with the practical nursing. I cannot say anything more in words, but I enjoy my work and I believe I could not be happier than I am in my profession. With the help of my dear Lord I hope I may do all that is pleasing to Him and make a nurse as He wants me to be."

A third year student expresses herself thus:

"My motive for taking up nursing was that nursing appealed to me as that state in which I could do the most good. It seemed to me that what our Lord said of him who gives a glass of water in His name applied especially to nurses, for if nurses do all the little things they do for patients in God's name their work must be blessed by Him."

Religious motives do not exclude other reasons for entering training as in the following example:

"I felt my calling to the nursehood as my vocation and hoped with the help of God to become worthy of it; also to understand and to be able to help suffering

mankind for the honor and glory of God and to be able to make my own living if I should ever have to."

(b) Altruistic Motives. Altruism is not necessarily a religious motive, though in all probability it is frequently associated with religious concepts. Many experience very early the yearning to help those who cannot help themselves and this motive occurs again and again as the reason for entering training. Exclusive of those who mentioned it along with religious motives it was found in thirty-seven, or 51.4 per cent., of the seventy-two who gave their motives. For example:

"My motive for taking up nursing was chiefly because I had a keen desire to help people who were ill or in serious trouble. I liked doing personal services for them. As quite a young girl I enjoyed visiting the elderly people in our town, and if the opportunity presented itself I would help bathe them, or comb their hair, or clean their false teeth. Once I made so bold as to dress one woman's varicose ulcers. Motive number two was my admiration for the nurse's uniform. . . . I did actual bedside nursing for a number of years and then drifted into Public Health Work. While I always enjoyed the curative phase of nursing while I was doing it, I find now that I like P. H. much better. It seems so much more worth while. I know now that I get more real pleasure in teaching a mother how to control communicable disease in a community than nursing her child through a case of diphtheria which can so easily be prevented these days."

(c) Personal Motives. Others had neither religious nor altruistic motives for entering on their career of nursing, but these in our group were a considerable minority, twenty-

six, or 36.1 per cent., of those reporting their reasons for entering training. Some of these may have had higher motives but did not mention them.

Of these one said, "I took up training because at that time it was the cheapest situation one could obtain and I realized I had to support myself;" another wanted to be either a nurse or a teacher and "took nursing because the hospital was near home;" another because she was "very curious as to the anatomy of the human body and its functions;" another because of family conditions; another because she did not like teaching or business, etc.

A PROFESSION INVOLVES SERVICE TO GOD AND MAN

The *Principles of Medical Ethics* of the American Medical Association lays down the following fundamental principle:

"A profession has for its prime object the service it can render to humanity; reward or financial gain should be a subordinate consideration. The practice of medicine is a profession. In choosing this profession an individual assumes an obligation to conduct himself in accordance with its ideals."¹

These words express a profound and important truth. The object of the medical profession, the nursing profession, and of every profession is not the financial gain of the individual but the service that can be rendered to humanity. It may be extended still further and one can say that the prime end of every man's work in the world is not financial gain but the service he renders God by serving humanity.

One may take it as a general principle that one is responsible for the proper use of one's abilities and the opportunities that may arise for their exercise. If this is the case it is a clear duty to use intelligence in the planning of one's

¹ Chapter I, Section 1. The Physician's Responsibility.

life. Life is not a matter of mere personal enjoyment; it is an opportunity to be used in the service of God. And if that is the case, it is our duty to conceive of it as such and plan our life so as to be of service to God.

PRINCIPLES

We may lay down the following ethical principles as flowing from the considerations presented in this chapter :

1. The specific function of man is to interpret the universe, that is, to know God and things in relation to God, and to plan his life and live it out in the light of that knowledge.
2. Life cannot be conceived of as a time for mere personal satisfaction.
3. Life is inadequately conceived of as a service to one's fellow men, but such service is rendered more stable and seen in its true light when it is referred ultimately to God and understood as an item of coöperation by which one does his part in the divine plan of the universe.
4. A profession involves an obligation of service to God and man and on that account rises above mere business as commonly understood.

CHAPTER 2

LAW AND ITS BINDING FORCE

In the preceding chapter we have defined the specific function of man as the use of his intelligence in understanding the universe. We have pointed out briefly that this use of intelligence leads us to the knowledge of God, the Cause of causes, and that it becomes man's duty to know God and himself in relation to God and his fellow men, and to act in accordance with the knowledge so attained.

The Eternal Law. It is evident that God, the supreme Cause of all that is, must act with a purpose and that He has therefore a divine ideal towards which all creation tends in virtue of a direction which He imposes upon the effects that flow from Him. Divine Wisdom giving expression to the end of all creation is the Eternal Law which governs all nature and the minds of men. His will imposes on nature the absolute necessity of moving and developing in accordance with the Eternal Law; but on the mind of man it lays a duty and an obligation of obedience. For man, as an intelligent being with power over his conduct, can see his duty and act or not act in accordance with it. In this way he differs profoundly from things that have no power of understanding ends and duties and must follow blindly the forces imposed upon them by their Creator, in virtue of which they must move in their orbits without any deviation or manifest the activity to which they have been absolutely necessitated.

Natural Law. Human beings by the simple exercise of ordinary intelligence know the Eternal Law not directly as it is in itself but indirectly and as it applies to themselves.

The Eternal Law, as it applies to man, and is known by man by the exercise of reason, is spoken of as the *natural law*.¹ Its general expression is, *You must do good and avoid evil*,² and as such is one and the same for every intelligent being. The inner sense of obligation which human beings experience throughout life to do good and avoid evil is not imposed on them by parents, nor does it arise merely from the unconscious depths of the individual himself. Philosophically it is evident that God directs all beings to their final end, the non-rational by necessity and without any sense of moral obligation, but rational and intelligent beings by their obedience to a law which their reason makes known to them. Their experience of a sense of duty to do right and avoid wrong is their consciousness of the divine direction to do that to which they are obliged by the Eternal Law.

The primary duty in doing right and avoiding wrong is the great obligation of truth and honesty, that is to say, to recognize and proclaim the fundamental fact that God is God, the Cause of all causes, the source and origin of all that is; and that we are His creatures and utterly dependent on Him. And then we must mirror the divine perfection in our own character by attaining to the perfect ideal of a man. In this way we shall not only give glory to God in our own way and by our tongues but also as all nature does when *the heavens show forth the glory of God*.³

¹ St. Thomas. *Summa Theologica*. 1. 2. Q. XCI, ii.

² St. Thomas. *Summa Theologica*. 1. 2. Q. XCIV, ii.

³ Cf. Thomas J. Bouquillon. *Theologia Moralis Fundamental*, Bruges: 1890. Pp. 147-148.

Roscoe Pound's "Ideal Element in American Judicial Decision" (*Harvard Law Review*, 1931-1932, 45, 136 ff.) is really an attempt to show with a wealth of citation how at various times and in various courts the attempt has been made to apply by one standard or another the natural law to legal cases. Cf. also Charles Grove Haines. *The Revival of Natural Law Concepts*. Harvard University Press: 1930.

An article by Percy H. Winfield, "Ethics in English Case Law" (in the same volume of the *Harvard Law Review*, pp. 112-135), gives some concrete examples of attempts, rather vague indeed, to decide cases by appealing to what is just and reasonable, that is, to the natural law.

Some writers fail to distinguish between the natural law, which is what it is because God is what He is, and divine positive law, which is imposed by revelation and in many points might have been very different. To speak in terms of our human understanding, natural law proceeds from the Divine Essence; divine positive law proceeds from the Divine Will.

There has been much confusion about the concept of natural law¹ because legal writers have lost the idea of its derivation from the Eternal Law, God Himself, as Infinite Wisdom directing all things to their true end.

Furthermore legislative bodies, in their deliberations, need not enter into the metaphysics of law, but merely attempt to legislate for the true welfare of their subjects. In so far as their laws do promote the true good of man they are necessarily the expression of the natural law.

Positive Law. Human beings do not exist in isolation but live in social units, families, cities, nations. It is a practical necessity that the relations of human beings to each other and to the state should be specified by positive enactments or human laws. It follows that if God is the supreme intelligence which directs finite intelligences to their end, all human laws have binding power because they give expression to the Eternal Law. No ruler, no legislative body, has any inherent power to direct human beings to any other end than that of the Eternal Law. Any enactment clearly contrary to the Eternal Law could not have the binding force of law. But all laws of properly constituted authority are to be treated with profound respect and whenever the matter is doubtful one must accept the enactment as a law binding in conscience.

The rules and regulations of hospitals and various institu-

¹ Cf. Benjamin Fletcher Wright. *American Interpretations of Natural Law*. Cambridge, Mass.: 1931. Pp. x + 360.

tions do not have the force of laws binding in conscience under pain of sin, for only the supreme legislative power can make laws binding in conscience. Furthermore, just as an enactment contrary to the natural law cannot bind in conscience the subjects of the law-making body, neither can anything which the natural law does not command or prohibit be given a binding force in conscience merely because it is enacted by a law-making body without reference to the general welfare, or incorporated into the rules and regulations of a hospital.

Some rules and regulations of hospitals, however, are expressions of the natural law, e.g., a nurse must not sleep when on duty. It is evident that the nurse enters into a contract to care for a patient and more or less serious harm or inconvenience might result from a nurse going to sleep when on duty. According to the probability and gravity of the harm that might ensue would be measured the gravity of the offense.

On the other hand the rule, that a nurse must not accept anything to eat from a patient, does not specify what is contained in the natural law, and when a nurse accepts, for example, a piece of chocolate from a patient she commits no sin.

Nevertheless rules and regulations are made that all may go smoothly and when a nurse is discovered transgressing hospital regulations she has no cause for complaint if the penalty is imposed.

It is the part of wisdom and prudence to keep all rules, saying to oneself: There is often a good reason for rules I do not understand and obedience in the end will bring its own reward.

Penal Law. Certain legal decisions distinguish between various kinds of laws:

- (1) laws which prohibit a *malum in se*.
- (2) laws which prohibit an act which is wrong only because it is prohibited. Of these there are two classes:
 - (i) laws which envisage the public welfare.
 - (ii) acts which are enacted for the sole purpose of raising revenue.

Any contract,¹ for instance, which stipulates the performance of that which is *malum in se* is *ipso facto* invalid. A contract which stipulates that which is prohibited by law because the act is against the public welfare is also invalid because it is wrong to do anything against the public welfare and the state has the right to decide what is and what is not contrary to the public welfare.

All citizens of a country are bound in conscience to obey laws which prohibit what is *malum in se* and also what the state lays down, not because it is essentially wrong, but because present circumstances demand it for the public welfare.

Blackstone makes the same distinction:

“Now these prohibitory laws do not make the transgression a moral offence, or sin: the only obligation in conscience is to submit to the penalty if levied. It must however be observed, that we are speaking of laws that are simply and purely penal, where the thing forbidden or enjoined is wholly a matter of indifference, and where the penalty inflicted is an adequate compensation for the civil inconvenience supposed to arise from the offence. But where disobedience to the law involves in it also any degree of public mischief or private injury, then it falls within our former distinction, and is also an offence against conscience.”²

¹ Cf. hereon Griffith *vs.* Wells. Reports of Cases in the Supreme Court of New York by Hiram Denis. (July, 1846) 1859. Vol. III, 226-228. Ample citation of cases.

² Sir William Blackstone. Commentaries on the Laws of England. An-

CIVIL LEGISLATION BINDS IN CONSCIENCE

The supreme court of Ohio spoke as follows:

"That master of legal definition in the English law, Sir William Blackstone, more than a century and a half ago, laid down this definition of law:

" 'A rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong.' 1. Blackstone's Commentaries, 44.

"Our American courts with substantial unanimity have approved that definition, with this addition, that such command and prohibition shall not be in clear conflict with our organic law, our written Constitution. The law, then, as so defined, clearly constitutes a direct mandate to the people of duty, or a direct prohibition of some act or thing. In its very essence it must be a requirement and demand, a mandatory order or rule, in order to be of the nature of a law. The law, civil or criminal, creates liability, and liability cannot be predicated upon those things that are merely advisory, merely directory—only upon those things that are obligatory and mandatory.

"It is not unlikely that there is abroad in the land to-day a disposition to regard many of our laws as merely directory, and that it is the right and privilege of the individual citizen to choose those laws that he will obey, and those laws that he will disobey, at his pleasure and without penalty; but the Blackstone idea followed by English and American courts is the only one that can give simplicity and stability to our law, and security to our institutions created and conserved by it." ¹

notated edition by Thomas M. Cooley. 4th Ed. by James DeWitt Andrews. Chicago: 1899. P. 58* (51). Introduction, Section ii.

¹ 136 N. E. 923.

This powerful language was called forth by what might be looked upon as a triviality. On November 8, 1921, Thomas C. Devine and William H. Tucker, Jr., were the only candidates running for the office of councilman of the nineteenth ward at Toledo, Ohio. Each received exactly 1,866 votes. One ballot for Tucker was marked with ink instead of black lead pencil as prescribed by law. The supreme court held that the ballot was illegal and could not be counted for Tucker, maintaining that it is the voter's duty to vote as prescribed by law and not in whatever way he pleases. Though the matter may seem to be trivial, it is not, however, so trivial as it appears, for there is a moral duty for citizens to vote and take part in public affairs to the best of their ability.

As Leo XIII said, "To take no share in public matters would be equally as wrong (we speak in general) as not to have concern for, or not to bestow labor upon, the common good."¹

If it is a moral duty to vote it is also a moral duty to vote with respect to the law and with such reasonable care that the vote will be legally cast.

The incident served the court as an opportunity to remind the people of their legal obligations in general. The condition of which the court spoke is all too widespread. Many individuals have no respect for law. They maintain that the state has no power to lay upon them any laws binding in conscience, and therefore they can obey or disobey any law they please. But this is contrary to sound legal opinion and to the teaching of the church.

The Blackstone idea mentioned by the supreme court of

¹ Encyclical Letter on the Christian Constitution of States. *Immortale Dei*, Nov. 1, 1885. The Great Encyclical Letters of Leo XIII, with Preface by John J. Wynne, S.J. New York: 1903. P. 131.

Ohio is that laws bind in conscience, that is to say, it is a sin to break them.

State laws bind in conscience because they are the expression of the natural law. As Blackstone says:

"This law of nature being coeval with mankind, and dictated by God Himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original."¹

When the state commands and prohibits what God commands and prohibits, the state law binds in conscience because in the last analysis it is only giving expression to the Eternal Law, the Divine Will guiding, directing and imposing obligations on the members of the human race.

When the state lays down laws restricting the activity of individuals for the true welfare of society, such laws bind in conscience because God wills the true welfare of society.

Furthermore, the Divine Will ruling and regulating human conduct is the source of every law. This does not mean that God can will anything and could have laid down the contradictory of all the moral laws now known to man, for the ultimate source of the Eternal Law from the limited point of view of human intelligence is the Divine Nature, not the Divine Will. God wills what He wills because He is what He is.

The State Cannot Create Obligation. Chief Justice Marshall recognized this in 1827 when he expressed the following opinion:

¹ Blackstone, *op. cit.*, p. 42* (36).

"So far back as human research carries us, we find the judicial power as a part of the executive, administering justice by the application of remedies to violated rights or broken contracts. We find that power applying these remedies on the idea of a preëxisting obligation on every man to do what he has promised on consideration to do; that the breach of this obligation is an injury for which the injured party has a just claim to compensation, and that society ought to afford him a remedy for that injury. We find allusions to the mode of acquiring property, but we find no allusion, from the earliest time, to any supposed act of the governing power giving obligation to contracts. On the contrary, the proceedings respecting them of which we know anything, evince the idea of a preëxisting intrinsic obligation which human law enforces. If, on tracing the right to contract, and the obligations created by contract, to this source, we find them to exist anterior to and independent of society, we may reasonably conclude that those original and preëxisting principles are, like many other natural rights, brought with man into society: and although they may be controlled are not given by human legislation."¹

THE UNITED STATES OF AMERICA A RELIGIOUS NATION

Any concept of law which made it the mere will of the supreme governing body to demand the type of behavior its members might agree to insist upon would be against the fundamental law of our land and the liberties guaranteed by the Constitution. Any such concept of law would be funda-

¹ *Ogden v. Saunders*, 12 Wheaton U.S. (Boston: 1855. Vol. VII), p. 207 (344, 345). (12 Wheaton 23) 25 U.S. Supreme Ct. Rpts. 651.

mentally antireligious. The Supreme Court of the United States has decreed that

“no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation. The commission to Christopher Columbus, prior to his sail westward, is from ‘Ferdinand and Isabella, by the grace of God, King and Queen of Castile,’ etc. and recites that ‘it is hoped that by God’s assistance some of the continents and islands in the ocean will be discovered’ etc.”

The decision then goes on to enumerate how the concept of God has entered into the colonial grants, charters, the Declaration of Independence and the constitutions of the various states, and then continues:

“There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons: they are organic utterances; they speak the voice of the entire people. While because of a general recognition of this truth the question has seldom been presented to the courts, yet we find that in *Updegraph v. The Commonwealth*, 11 S. & R. 394, 400, it was decided ‘Christianity, general Christianity, is and always has been, a part of the common law of Pennsylvania; . . . not Christianity with an established church, and tithes, and spiritual courts; but Christianity with liberty of conscience to all men.’ ”¹

¹ *Church of the Holy Trinity v. United States*. 143 U.S. 457.

The common law is thus defined by Clark and Marshall:

"By the 'common law' is meant that portion of the municipal law which does not rest for its authority upon any express aid of the legislature, but is founded upon usage and custom. It is called the unwritten law in contradistinction to the written or statute law." ¹

The original source of the common law in this country is the tradition and usage of the people of England. Naturally, however, all that applies to the king and the established church and everything else in the English tradition which finds no application in the altered conditions of this country does not hold here with binding force. As was said by the court of appeals of the state of New York:

"It is contrary to the spirit of the common law itself to apply a rule founded on a particular reason to a law when that reason utterly fails, *cessante ratione legis, cessat ipsa lex*." ²

Whenever the reason for the law ceases, the law ceases, and, consequently, much of the common law of England no longer applies in this country. But the *common law is essentially an attempt at the expression of the natural law which can never cease to bind*. Considered in this sense only can the following words of Clark and Marshall be correctly understood.

"It is almost needless to say that there are no such crimes in this country as apostasy, heresy, nonconformity to the worship of a church, etc. The constitution of the United States expressly declares that 'Congress shall make no law respecting an establishment of religion, or

¹ Wm. L. Clark and Wm. L. Marshall. A Treatise on the Law of Crimes. St. Paul: 1905. Pp. xxxiv + 906. P. 19.

² The People v. The Canal Appraisers. 33 N. Y. 483.

prohibiting the free exercise thereof' and the state constitutions contain similar limitations on the power of the state legislatures.

"It has been said in a number of cases that Christianity is a part of the common law, but from what is said above it is clear that this is true only in a very limited sense. The fact that most people in this country, as in England, are Christians makes certain acts like blasphemy and open and notorious lewdness, offensive, so as to render them public nuisances, and for this reason indictable at common law; but as stated above, no act is punished at common law in this country *merely* because it is contrary to the Christian religion. Nor, in view of our constitutions, could an act be punished for this reason alone. It must be conceded therefore, that Christianity is not, in any proper sense, a part of our common law."¹

The Natural Law Still Holds. In so far as the common law is the expression of the natural law it still binds in conscience. States may decree, as several states have actually done, that they will not penalize any offenses which have not been made statutory crimes, but they cannot of course abrogate the natural law of which the common law is only an attempt at expression.

If this United States is a religious people and a Christian nation, the concept of law and its binding force upon the citizens must be fundamentally and essentially religious and Christian. If this is so, the concept of our laws must be that they derive their binding power from the Eternal Law, the Will of God which directs all men to their true end. The

¹ Clark and Marshall, *op. cit.*, p. 699.

Christian concept of the authority of the state gives the state true legislative authority and the power to make laws and not merely penalize their transgression but also to demand obedience in virtue of a true moral obligation binding in conscience.

THE CHRISTIAN CONCEPT OF CIVIL AUTHORITY

Moral theology recognizes not only the Eternal and natural law but also the civil law as true law binding in conscience.

It does this on purely rational as well as on scriptural grounds. The rational grounds are derived from the necessary truth that God wills the welfare of the individual and of society. But neither the welfare of the individual nor of society could be conserved without laws governing the individual and society in their manifold relations. Obedience to these laws is demanded by God because He wills the welfare of mankind as well as man. There must therefore be in society some kind of legislative body to derive from the principles of the natural law specific enactments for the welfare of its members and a judiciary to administer the positive laws thus enacted.

Laws which can be derived from the natural law and are, therefore, for the true welfare of society must bind in conscience because they are derived from the natural law.

St. Thomas says:

“Positive human laws are either just or unjust. If indeed they are just they have the power of binding in the court of conscience from the eternal law from which they are derived according to Proverbs viii, 15: *‘By me kings rule and lawgivers decree just things.’*”

LAW AND ITS BINDING

"Laws are said to be just

from the *end* when, namely, they are o
the general welfare.

from their *author* when, namely, the law
does not exceed the power of the lawmake.

from their *form* when, namely, the burdens to
borne for the general welfare are imposed up
subjects according to the equality of proportion.
For since a man is a part of a multitude each
man, as to that which he is and has, is of th
multitude, as any part, in proportion to its s
is of the whole. Whence nature itself will c
some detriment to a part in order that the
may be saved. And in this way such la
distribute burdens proportionally are
bind in the forum of conscience, and
laws.

"Laws are unjust in two ways:

"In ONE WAY because they run counter
welfare

either from the *end* as when a
oppressive laws that do not
general welfare but more to
or vanity.

or from the *author* as when

law that exceeds the po

or from the *form* as wher

unequally among the

are ordained to the

crees are rather act

cause as St. Aug

Arb. Ch. 5 a little

not seem to be

"Whence such law

GENERAL PRINCIPLES

did scandal or disturbance, for which reason
should yield even his rights according to the
from St. Matthew (v, 40 and 41) : *'whosoever
thee one mile, go with him other two,'* and he
would *'take away thy coat let go thy cloak also unto*

'In a SECOND WAY laws are unjust because they are contrary to the divine good, as the laws of tyrants introducing idolatry or anything else which is against the divine law. And such laws it is never right to obey as says in the Acts (v, 29) : *'we ought to obey God rather than man.'*"¹

ral the constitution of a country establishes stand-
tice, and the courts of the land have the right to
is and what is not constitutional.

Church is the custodian of the divine law and has to determine whether or not any positive enactment is conformable to the divine law. It is in this region that the law finds its special application: "Render, therefore, unto Cæsar's things that are Cæsar's and to God the things that are God's." But even if a man in all good faith and in the name of the church, he cannot unconditionally obey a legislative body as a law binding upon him, if he clearly perceives that an enactment is contrary to the law of God; he, too, has his duty to obey God rather than man. However, in the most flagrant cases of unbelief, his own personal opinion, for example, that in general the laws of the State are in accordance with the law by court decisions, impose upon him to obey in all subjects.

and Penal Laws. Moral

theology recognizes the distinction between moral and penal laws. Lehmkuhl thus expresses it:

"Every law should impose some obligation in conscience. For by its very notion it is a bond of a moral character which cannot correctly be conceived without any obligation in conscience.

"One must distinguish nevertheless a *moral* law and a *merely penal* law in the sense that a moral law binds at once in conscience to do or not do what the law prescribes. But the penal law does not oblige definitely to this particular thing, but only under the hypothesis that if what the law demands is not accomplished one is bound *in conscience* to endure the penalty or pay the fine, when and as it is imposed, unless for some other reason the law is invalid. S. Alph. I, 145 and 148.

"Moreover a moral law even when imposed by civil authority imposes an obligation under pain of sin, either grave or light, according to the matter and as the will of the lawgiver determined it. Cf. S. Alph. I, 143, 144." ¹

Leo XIII in his Encyclical Letter, "The Christian Constitution of States" (*Immortale Dei*, November 1, 1885), laid down the principle that all civil authority is from God and appealed to both reason and scripture in its support.

"Man's natural instinct moves him to live in civil society, for he cannot, if dwelling apart, provide himself with the necessary requirements of life, nor procure the means of developing his mental and moral faculties. Hence it is divinely ordained that he should lead his life—be it family, social, or civil—with his fellow men, amongst whom alone his several wants can be adequately

¹ *Theologia Moralis*. I, p. 145, § 239. Eleventh Edition, 1910.

supplied. But as no society can hold together unless some one be over all, directing all to strive earnestly for the common good, every civilized community must have a ruling authority, and this authority, no less than society itself, has its source in nature, and has, consequently, God for its author. Hence it follows that all public power must proceed from God. For God alone is the Supreme Lord of the world. Everything, without exception, must be subject to Him, and must serve Him, so that whosoever holds the right to govern, holds it from one sole and single source, namely, God the Sovereign Ruler of all. *There is no power but from God.* (Rom. xiii, 1.)

"The right to rule is not necessarily, however, bound up with any special mode of government. It may take this or that form, provided only that it be of a nature to insure the general welfare."¹

The natural corollary of this is that the state has the power by legal enactments to bind its subjects in conscience to obedience and not merely to threaten them with the penalty of transgression. Leo XIII in the same encyclical dwells thus upon the sacred character of civil authority:

"In political affairs, and all matters civil, the laws aim at securing the common good, and are not framed according to the delusive caprices and opinions of the mass of the people, but by truth and by justice; the ruling powers are invested with a sacredness more than human, and are withheld from deviating from the path of duty, and from overstepping the bounds of rightful authority; and the obedience of citizens is rendered with a feeling of honor and dignity, since obedience is not the

¹ L.c., pp. 108-109.

servitude of man to man, but submission to the will of God, exercising His sovereignty through the medium of men. Now, this being recognized as undeniable, it is felt that the high office of rulers should be held in respect; that public authority should be constantly and faithfully obeyed; that no act of sedition should be committed; and that the civic order of the commonwealth should be maintained as sacred.”¹

PRINCIPLES

1. The Eternal Law is God Himself conceived of as Divine Wisdom directing all things to their final end.

2. The natural law is the Eternal Law as it applies to man and as it is made known to man by his own reason sitting in judgment on conduct.

3. Positive law consists of special enactments made by the ruler or legislative body for the welfare of society. Divine positive law is made known by revelation, human positive law by the promulgation of the decrees of the legislative power.

4. Positive legal enactments, if they are expressive of the natural law, bind the consciences of all those subject to the legislative body.

5. No legal enactment can have any binding force in conscience if it is contrary to the natural law.

6. All enactments which promote the true welfare of the social order are expressive of the natural law.

7. The regulations of hospitals and various institutions have no binding force in conscience except and in so far as they are expressive of the natural law.

8. Laws which do envisage the public welfare but which are enacted for sole purpose of raising revenue are penal laws.

¹ Ibid., pp. 116-117.

9. Penal laws do not bind in conscience but merely to the payment of the penalty for disobedience when imposed.

10. The state cannot create obligations, but all civil laws suppose an antecedent obligation of the subjects to do right and avoid wrong.

11. The common law is the traditional attempt to give expression to the natural law.

PROBLEMS FOR DISCUSSION

Discuss the following statements and problems:

1. A law is "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him" [Austin, *Jurisprudence*, 3rd Ed., 88. Quoted by Roscoe Pound. *A New School of Jurists*. The University Studies of the University of Nebraska, 1904, 4, p. 263 (15)].

2. "A law, in the proper sense of the term, is therefore a general rule of human action, taking cognizance only of external acts, enforced by a determinate authority, which authority is human, and, among human authorities, is that which is paramount in a political society. More briefly, a general rule of external human action enforced by a sovereign political authority." [Holland, *Elements of Jurisprudence*, Ch. 3 (conclusion). Quoted by Roscoe Pound and Theodore F. T. Plucknett. *Readings on the History and System of the Common Law*. 3rd Ed. Rochester: 1927. P. 9.]

Granted for the moment that a civil court can deal only with external behavior, can one also say that law in its true nature

(a) deals only with external acts?

(b) is nothing more than a general rule of external human action enforced by a sovereign political authority?

3. "We have defined a principle of law as a principle recognized and acted upon by the State in the administration

of justice. It follows that the validity of a legal principle is entirely independent of its truth. It is a principle of law, not because it is true, but because it is accepted and acted upon by the State as true. That two and two make five is open to grave objections as a principle of mathematics, but may be a perfectly valid rule of law. As Hobbes says: *Auctoritas non veritas facit legem* (Authority not truth makes the law). Nor does the existence of a legal principle imply or involve any belief in its truth." [Salmond, *First Principles of Jurisprudence*, 83-84. Quoted by Roscoe Pound and Theodore F. T. Plucknett. *Readings on the History and System of the Common Law*. P. 31.]

4. A young girl, suffering from a mild depression because of her isolation from social contacts, maintained as part of her philosophy of life that she was not bound to obey any laws. She said that all laws are merely imposed on some human beings by other human beings in order that the human law-makers may live with less disturbance than they would if there were no laws. What right, she asked, has any human being to lay down a law for any other human being?

CHAPTER 3

MORAL RESPONSIBILITY

Conscience is reason sitting in judgment upon law and conduct. It is not a special mental power, but the same human intelligence by which we argue and judge about the problems that fall outside the sphere of morality.

When we act honestly in accordance with our conscience, the act is morally good; when we act against our conscience the act is morally wrong and commonly termed a sin.

The Gravity of Moral Obligations. It is evident that all sins are not equally serious. A sin is spoken of as grievous or mortal when it is a grave offense against the law of God. Thus men living together in society must be mutually helpful and coöperative. If instead of being helpful and coöperative, a nurse robs a poor patient of twenty-five dollars she has done the patient a grievous injury and therefore committed a grievous sin. If one nurse, just to show that she is as efficient as her predecessor, charts having persuaded a patient to take nourishment she really refused from her but took from the first nurse, she has not done anyone a serious injury; but lying in that way tends somewhat to undermine the trustworthiness of charting in general and she has done wrong, although not grievously wrong.

Nurses and all others should realize, however, that it is a dangerous practice and highly unethical to commit little sins just because they are little and not grievous. Freedom from all sin and perfect conformity to the ethical ideal are the end towards which we must ever consciously strive.

Criteria of Gravity. That an offense against the law of God should be grievous it must not only be in itself a matter of serious importance, but it must also be clearly known to be a serious offense against the law of God, and with this knowledge one must deliberately make up his mind to do it.

Knowledge in Relation to Responsibility. If through no fault of one's own one does not know that what he does is wrong or seriously injurious, then even though serious consequences follow from his action he is not to blame.

Take the following incident. A surgeon asks for more light. A light placed in the operating room for that purpose is moved by the nurse over the patient. She jostles it and unseen by the nurse or the surgeon a cloud of fine dust rains down upon an open abdomen. It is clear that in moving the light the nurse *de facto* produced the subsequent infection, but she had no knowledge of the cause and when it was reported to her later by a student observer she had no reason to blame herself, unless it was her duty to see that that particular light was kept free from dust.

The problem of sterilization of instruments sometimes is a matter of scruple or of more or less culpable action on the part of nurses.

If a nurse hands a surgeon an instrument which she knows to be contaminated in an operation where an infection might well mean the life or death of a patient, she is guilty of a grievous sin because she becomes responsible for what there is good reason to suppose might result in the death of the patient.

If a nurse cuts short the prescribed time of sterilization, assuming the time of sterilization was not wholly inadequate, and turns in instruments which may not be sterile, her ignorance of whether the instruments are sterile or not lessens but does not take away her guilt.

If a nurse should turn in instruments for a major opera-

tion which might or might not have been sterilized, and she took no pains to find out because she did not want to be bothered, her ignorance would be entirely culpable and the action would be a grievous sin.

When it is a rule in a hospital that forceps which have been contaminated should be sterilized before they are placed in lysol, a nurse who has contaminated a pair of forceps should not use her judgment and say the forceps are bound to be long enough in lysol to effect sterilization before being used again and not take the forceps to be sterilized. As a matter of fact she does not know. Her ignorance lessens but does not entirely excuse the guilt of her action.

The general principles governing the question of ignorance are as follows :

Invincible ignorance, that is, ignorance for which one is in no way responsible, takes away guilt entirely.

Vincible ignorance, that is, ignorance which might have been avoided, diminishes guilt.

Gravely culpable ignorance, that is, ignorance which should have been avoided and which the individual took no pains to correct, in no way diminishes guilt.

Emotional Conditions. Not only ignorance but also emotional conditions affect human responsibility. Whenever one is in such a violent emotional state that he does not see clearly what he is doing or is driven to act impulsively and without reflection, responsibility is diminished and perhaps to such an extent that it is taken away entirely and the individual is not guilty of doing what is itself a wrong and criminal act. Fear is the emotion which most often clouds consciousness and diminishes guilt. It must be borne in mind, however, that merely being threatened with consequences, no matter how serious, does not in itself do away with responsibility. In the days of the martyrs those who

coolly denied the faith in order to save their lives were guilty of a grievous sin. And in our own days a nurse who acts against her religious or moral convictions to secure or maintain a position, or for any other reason, is grievously culpable.

What one does, however, under the influence of momentary excitement may or may not be a fully responsible act. All depends upon whether or not one clearly knows what he is doing and what it entails, and does or does not do it in the light of a clear and adequate insight. The whole problem of legal responsibility for crime is theoretically simple, and all the difficulty arises in demonstrating in a court procedure the presence or absence of the clear and adequate insight.

Angry and impatient surgeons, supervisors who scold in an unreasonable manner, sometimes produce a state of such excitement in the nurses who have to put up with them that in the flurry of the moment things are done or omitted which would have been gravely culpable were it not for the clouding of consciousness by undue emotional tension.

PRINCIPLES

1. Conscience is reason sitting in judgment on conduct.
2. What is done in the light of a reasonable conclusion that a certain act or course of action is right, is morally good; what is done in spite of our conclusion that it is wrong, is morally bad.
3. All offenses against the moral law are not equally grievous.
4. That an offense against the law of God should be grievous, it must not only in itself be a matter of serious importance, but it must also be clearly known to be a serious offense against the law of God, and with this knowledge one must deliberately make up his mind to do it.

5. Invincible ignorance, that is, ignorance for which one is in no way responsible, takes away guilt entirely.

6. Vincible ignorance, that is, ignorance which might have been avoided, diminishes guilt.

7. Gravely culpable ignorance, that is, ignorance which should have been avoided and which the individual took no pains to correct, in no way diminishes guilt.

8. Mere apprehension of very grave consequences which will certainly follow unless one consents to do what is wrong does not take away responsibility.

9. Emotional excitement which is so extreme that one does not realize what he is doing diminishes, or may even take away, guilt.

PROBLEMS FOR DISCUSSION

Judging by the diaries of the nurses, they are sometimes anxious about trivialities and again treat rather serious matters as trivialities. It might be well, therefore, for the students to discuss the following incidents from the point of view of the gravity of the offenses, enunciating the principles laid down in the above discussion which govern the moral problems involved.

1. A patient is getting a continuous hot water soak to her hand. The solution is supposed to be made of sterile water, but that means going upstairs to the next floor about every half hour to change the solution; so the nurse, if she happens to be busy, uses tap water instead.

2. One of the patients had grapefruit for breakfast and she didn't care for it. When the nurse came to take her tray she asked the nurse to eat it because she didn't like to see it wasted. The nurse ate it in the patient's room in spite of the rules of the hospital.

3. Today a nurse who was in a hurry to get off duty took some material out of the sterilizer about five minutes before she should have.

4. When one of our nurses went off duty today she found that another nurse had been in her room and taken some cookies she had there. Not only that but she stayed there to eat them and left the room in a very untidy condition.

5. Nurses seem to have a terrible habit of borrowing one another's belongings. Some of them do it so habitually that they think nothing of "borrowing" without asking and sometimes forgetting to return what they took.

6. A nurse on duty in the nursery forgot to give a baby a special formula at the proper time. When she thought of it, it was too late, so she poured it in the sink and charted it given.

7. A nurse assisting at an operation contaminated one of her gloves. She told the supervisor, who was circulating, and she said, "That's nothing; nobody noticed it."

8. I saw a graduate nurse take a roll of bandage and one of adhesive tape off a dressing tray and put them in her pocketbook to take home.

CHAPTER 4

CONCERNING VIRTUE AND VICE IN GENERAL

It is a matter of general knowledge that virtues and vices are moral habits established by practice. It is also evident that man is responsible for his conduct. He has intelligence enough to perceive various ends of human endeavor: money and the pleasures it can buy, position and station in civil life and society, science, social work and religion. Not only can he perceive ends for his activity but also within wide limits select the means for attaining the ends which were chosen in the first place. This power of seeing ends, and choosing means by which they may be attained, makes man a morally responsible agent and psychologically a free and undetermined cause. At all events, whatever one's metaphysics, he must admit that human beings as a matter of fact do see various ends which they can attain by their activity, that these ends may be attained in various ways, and that men do select by conscious activity this or that way rather than another.

The Concept of Habit. It is from this power of selecting one course of action rather than another that habits in the true and proper sense are developed. Ordinary everyday language distinguishes between habitual action due to repeated voluntary choice and a tendency laid down by mechanical necessity.¹ One might, for instance, by placing a dam here, and another there, direct the course of a stream so that usually it would flow in a certain channel. But it would

¹ Cf. St. Thomas. *Summa Theologica*. 1. 2. Q. XLIX, iv.

be incorrect to say that the stream had developed a habit of flowing in one channel rather than another. The stream has had nothing whatever to do with the development of anything and has *de facto* developed nothing, but various necessities have been imposed upon it from without.

Neural Tendencies. Very similar to such a directing of the course of a stream are the neural tendencies imposed on animals by man, or the exigencies of natural existence, which are commonly termed animal habits. In all probability animals, though not pure machines, do not have an abstract insight into ends of conduct and do not exercise deliberate choice, in virtue of their insight, in selecting the various ways in which these ends may be attained. Rewards or punishments administered by man or nature develop neural tendencies by which a certain type of behavior becomes more or less probable.¹

Habits in Human Beings. In ourselves, however, we know by experience that we have many and conflicting desires. We know very often that the satisfaction of certain of these desires is against our true welfare. We know, too, that we have the ability to develop ideals of conduct and can and do strive to make conduct conform to our ideals. The repetition of conduct in conformity with ideals eventually makes it easier for us to live in accordance with the ideals. When this has been done we speak of the growth of good habits or virtues. On the contrary, the more constantly we act in opposition to our ideals of conduct the more easily we slip into types of behavior that are forbidden by our ideals. Here, too, we have developed habits, but bad habits or what we term vices. In the development of virtues and vices we ourselves have taken the leading rôle. We have directed our own activity. We may have been aided by rewards or punishments inflicted by nature, man or God

¹ Cf. St. Thomas, *op. cit.*, I. 2. Q. L, iii ad 2^{am}.

Himself. But we have not been like the stream that could not flow except as gravity pulled it. We have changed our own course of action and by persevering in one channel have deepened the bed till it becomes easier to flow in the way we ourselves have picked out, whether it be good or bad.

Neural Tendencies in Human Beings. Human beings have many purely neural tendencies like the so-called "habits" of animals. These are developed particularly in infancy and childhood; but as reason and true voluntary choice come to exercise more and more play in the guidance and control of behavior true habits commence to be formed. These habits are good and bad tendencies to act in a certain way, for whose formation the individual himself is personally responsible. They have therefore a moral character and are termed virtues and vices.

Prudence and Habit Formation. Prudence should be brought into play very early in life, for we are largely responsible for our future happiness and content, or unhappiness and discontent, by reason of the habits that we develop. Much discontent arises from the impossibility of satisfying cravings that have been made inordinate and unreasonable by habit. The individual himself is responsible for such cravings and his discontent is the psychological penalty of previous unreasonable conduct. What is going to make us happy depends in some measure and probably to a very large extent on the type of desires we elect to satisfy and the ways in which we train ourselves to seek their satisfaction. The simpler, harmless and less costly pleasures, the fruitful, productive and worth-while activities of the mind yield true happiness and a full measure of joy and permanent peace which ever remains within easy reach of those who have trained themselves to enjoy the wholesome, noble pleasures of which our nature is capable. But the costly and sinful, while yielding a short period of excitement, not only have their penalty

but are also out of reach and so their devotee becomes unhappy, discontented and rebellious.

Definition of Habit. Let us now proceed to a technical definition. The following was given by Aristotle:

“Virtue, then, is a state of character concerned with choice, lying in a mean, i.e., the mean relative to us: this being determined by a rational principle, and by that principle by which the man of practical wisdom would determine it.”¹

The “state of character” (ἡξῆς) here referred to was termed by St. Thomas a habit.²

Habit and Reflex Action. A habit is a tendency, established by voluntary practice, to act in one way rather than in another out of various possibilities.

It is not a reflex action, which is a native mechanism given with the ordinary endowment of nature. Virtues are acquired, but reflex actions are inherited. The response of a reflex action flows with natural necessity from a given stimulus, as when the pupil of the eye contracts under the influence of light. It cannot help contracting. But an habitual act does not occur by necessity when it is performed. Habit produces only a tendency, not a necessity of acting in a certain way. Habit implies a power of acting which originally is capable of flowing over into action in a number of ways, but which is gradually given a stronger and stronger tendency to flow in one particular channel, though it still remains possible for the individual to exert his power of action in any of the other possible ways.

Habit and the Conditioned Reflex. Virtue is not what modern psychologists would call a conditioned reflex. For,

¹ *Ethica Nichomachea*, II, vi, 1107a. Translated by W. D. Ross. Oxford: 1925.

² St. Thomas, *op. cit.*, I. 2. Q. LV, i.

as we have seen above, virtue develops from internal initiative, from truly human conduct involving intellectual insight and voluntary choice; but the conditioned reflex is merely a neural tendency imposed on the nervous system by external stimuli. For example, a bear may be taught to dance by putting him on hot tiles and playing at the same time some rhythmic melody. At first the bear lifts his feet because the tiles are hot, then he does so in rhythm with the music. Finally the music alone without the hot tiles will make the bear dance in virtue of a neural tendency imposed by the frequent association of music with a rhythmic lifting of the feet.¹ That such a mechanical performance bears only a superficial resemblance to human virtue, e.g., obedience, is evident. It is very important that education should recognize the difference between virtue and conditioned reflexes. The time for the development of conditioned reflexes is infancy and very early childhood. An attempt to develop true virtue, that is, stimulate the child to lay down his own lines of conduct in obedience to moral ideals, should be made from the time the child commences to understand the spoken word. Unless an adolescent takes himself in hand, the parents or teachers will not get far with an attempt to control conduct by rewards and punishments.

The Mean of Virtue. Virtue according to Aristotle is a habit, a tendency that one has developed to act in a certain way, while it still remains possible for him to act in a variety of different ways.

Aristotle describes virtue as lying in a mean between two extremes.

¹ For an interesting account of conditioned reflexes in children see: Jean Wintch. *Le dépistage précoce des oligophrènes*. *Zeitschrift für Kinderpsychiatrie*, 1934, 1, 37-49. For a general account of the early development of child behavior see: Charlotte Bühler. *The First Year of Life*. Translated by Pearl Greenberg and Rowena Ripin. New York: 1930. Pp. x + 281. Also: Arnold Gesell. *The Mental Growth of the Pre-School Child*. New York: 1928. Pp. x + 447.

"Both excessive and defective exercise destroys the strength, and similarly drink or food which is above or below a certain amount destroys the health, while that which is in proportion both produces and increases and preserves it. So too is it, then, in the case of temperance and courage and the other virtues. For the man who flies from and fears everything and does not stand his ground against anything becomes a coward, and the man who fears nothing at all but goes to meet every danger becomes rash; and similarly the man who indulges in every pleasure and abstains from none becomes self-indulgent, while the man who shuns every pleasure, as boors do, becomes in a way insensible; temperance and courage, then, are destroyed by excess and defect and preserved by the mean."¹

Pagan moral philosophy never rose above the concept of virtue as a mean between two extremes. Christian spirituality added the concept of the gifts of the Holy Spirit based on the beatitudes. It pointed to habits or tendencies to conduct which transcended the virtues and leaned far, very far, towards the side of self-denial. In so doing conduct is not dominated by reason but by something higher, the Holy Spirit, illuminating the mind of man and inspiring the will until poverty and sorrow become blessings that sanctify, rather than overwhelming calamities.²

In the present work we are dealing with moral philosophy, not moral or ascetic theology, and so do not enter further into this point.

Virtue, therefore, according to the Aristotelian concept is a mean between two extremes; but he expressly points out that it is not an exact middle line between the two extremes.

¹ Aristotle, *op. cit.*, II, 2, 1104a.

² St. Thomas, *op. cit.*, I. 2. Q. LXVIII, i f.

What is too much for one is too little for another, and so the mean of virtue is relative to the individual and not always the exact middle point between two extremes. Furthermore, in attempting to avoid one extreme we must at times steer well towards its opposite.

“To the mean in some cases the deficiency, in some cases the excess is more opposed; e.g., it is not rashness, which is an excess, but cowardice, which is a deficiency, that is more opposed to courage, and not insensibility, which is a deficiency, but self-indulgence, which is an excess, that is more opposed to temperance. . . . Hence also it is no easy task to be good. . . . Hence he who aims at the intermediate must first depart from what is the more contrary to it, as Calypso advises— Hold the ship out beyond that surf and spray.”¹

PRINCIPLES

1. The power of seeing ends, and choosing the means by which they may be attained, makes man a morally responsible agent and psychologically a free and undetermined cause.

2. Rewards or punishments, administered by man or nature, develop in animals neural tendencies by which a certain type of behavior becomes more or less probable. These neural tendencies resemble habits but are not true habits.

3. In the development of true habits the individual himself takes the leading rôle, by persevering voluntarily in a definite line of action till it becomes easier for conduct to flow in the channel the individual himself picked out in the first place.

4. Habits are good and bad tendencies to act in a certain way, for whose formation the individual himself is personally responsible.

¹ Aristotle, *op. cit.*, II, 9, 1109a.

5. Good habits are virtues and bad habits are vices.
6. Virtue and vice are neither reflex actions nor conditioned reflexes.
7. Virtue is a mean between two extremes, but a moral rather than an arithmetical mean, so that in various virtues it is necessary to steer well away from the extremes of excess and defect in order to maintain the good of reason.

PART TWO

MORAL DUTIES OF MAN
TO HIMSELF

THE CONCEPT OF DUTY TO ONESELF
PERSONAL OBLIGATIONS OF THE MORAL LIFE

PART TWO

MORAL DUTIES OF MAN
TO HIMSELF

CHAPTER 5

THE CONCEPT OF DUTY TO ONESELF

Personal Duty Derived from the Concept of Growth. All things that grow tend by nature to the perfection of their being. Man must be numbered among the things that grow. Man, however, has a twofold growth, physical and mental. Over his physical growth he can exercise no direct influence, but his mental growth is to a very large extent a matter of his own personal labor and initiative. His end from the point of view of growth is not merely a strong and healthy body, but also a vigorous and well-educated mind. But that is not all. Human perfection is not merely strength of body, keenness of intellect and vastness of information. These things are all means to attain the true end of man, the nature of which we have already considered. Man has, therefore, a moral, as well as a physical and intellectual, end. Since this moral end is the attainment of his true and supreme good, it is his highest end and, therefore, transcends all the subordinate ends of body and mind.

It might be laid down as a self-evident first principle that a being capable of understanding and choice has a duty to attain its own perfection. This we might say is the primary and general duty of the individual to himself. Furthermore,

whatever can be shown to lead in the highest sense towards the true good of the individual constitutes a proximate rule of conduct and standard of duty.

But the matter does not end here. No human individual, nor any creature whatsoever, is isolated and independent. All depend upon God, the supreme and perfect Goodness, Who because He is good directs all things to the attainment of their own perfection. Things that are incapable of understanding He directs to their ends by the laws of nature; intelligent beings He directs to their end by reason, illuminated in the natural order by life itself and its problems, and in the supernatural order by a special infusion of that true light which enlighteneth every man who cometh into the world. The perception by the finite intellect of the end to which Divine Wisdom is leading it creates an obligation of obedience in that intellect to act in accordance with the Eternal Law, the Divine Will, Which directs all things to their perfect end. Hence in the strict sense there are no purely personal duties, that is, duties which are solely duties to oneself and not duties to God. But we call those duties personal which formally and directly concern our own perfection, and do not terminate in God, as adoration, or in our neighbor, as kindness. All duties, whether to ourselves or to our neighbor, are at the same time duties to God.

Man, therefore, has a duty to take reasonable care of his own body so as to develop and maintain a sound and healthy organism.¹

Suicide, if a deliberate act by a normal mind, is not only the greatest physical injury that one can do to himself but a moral crime by which one refuses to tend to the ideal of perfection laid down by Eternal Goodness. It is the supreme act of cowardice by which one flies from the suffering and

¹ On the problem of sterilization, see page 250.

sorrow which would have led to the moral ideal had they been endured with patience.¹

Man has a duty to educate himself and to acquire such technical skill as he needs to fill, with credit to himself and good service to others, whatever place or function he has in life. Furthermore, he must keep abreast of the development in his profession or line of work, not only to be of service to others but also as a duty he owes to himself.

He also has a duty to harmonize his own interior life so as to maintain interior peace and mental stability and thus attain that fullness and perfection of beauty only to be found in a noble character.

Moral Hygiene. The duties pertaining to the welfare of body and mind are ordinarily considered in physical and mental hygiene. There should be developed another science, more important than either of these two, the science of moral hygiene. It argues for a lack of appreciation of true values in our day when so much time and energy has been spent on physical and mental hygiene, and moral hygiene has not yet been separated by modern research as a special field of investigation. It is true that a great deal has been done on the study of crime and juvenile delinquency. But in these matters a social rather than an ethical attitude directs the investigation, and distinctly unethical and immoral adjustments are tending more and more to find their advocates.

It took a great deal of work to set in operation an adequate program of physical hygiene in the schools, but today the importance of attending to such matters as teeth and tonsils is generally recognized.

Mental hygiene is making progress and much is being done by way of prevention of neurotic and psychotic condi-

¹ Moral and religious principles appear to affect profoundly the incidence of suicide as indicated by its reduction in Catholic as compared with non-Catholic countries. See: Maurice Halbwachs. *Les causes du suicide*. Paris: 1930. Pp. viii + 520. Ch. IX. *Le suicide et la religion*.

tions. But, as we have pointed out, in various centers of mental hygiene ethical principles are by no means given the consideration they deserve, and the primacy of moral over mental and physical values is frequently denied. The reason for this is largely the chaotic state of modern ethics. There are no outstanding moral philosophers, as there are eminent physicians and psychiatrists, to make a place in the world for moral hygiene. Furthermore the psychiatric world is often antagonistic to religion to which at the present state of human development one would naturally turn for moral guidance.

There is, however, no conflict in general between physical, mental and moral hygiene. Such conflicts as do arise are usually conflicts of personal desires and not of principles and are always capable of a rational solution. In case no adjustment is possible the lower good must yield to the higher and the moral is always superior to the physical and mental.

The Moral Ideal. Ethics is concerned primarily with the moral welfare of the individual. In what does this welfare consist? Briefly in the attainment of the good of reason. And in what does the good of reason consist? In the establishment of the relations reason dictates between myself and God, myself and my neighbor, and the harmonious adjustment of my inner life under the perfect sway of reason and intelligence.

In order that one may attain to a permanent establishment of these relations and a stable adjustment of his inner life he must build up a number of deeply ingrained mental attitudes and well-established habits of conduct known as virtues. The student of ethics must realize that ethics is not only a science but an art, and it is for him not only to learn principles of conduct but also how to direct conduct in accordance with principles.

It is possible and helpful to make a logical analysis of the virtues of human life from the point of view of subjecting ourselves in all things to the domination of reason.

The foundation for such a logical analysis of the virtues was laid down by Aristotle.

The Classification of Virtues. Aristotle pointed out the inadequacy of saying that virtue is to act according to right reason unless one defines in what right reason consists. In this way he arrived at the very important distinction of the difference between the moral and the intellectual virtues.

The intellectual virtues define for us the correct ideals and the moral virtues enable us to carry out these ideals in our daily life. The necessity of the moral virtues comes from the fact that all elements of our conduct do not come absolutely and unconditionally under the control of the will.

One whose nervous and muscular systems are normal can ordinarily execute the various movements of which the body is capable without any difficulty. He sees something he wants on the other side of the room; he rises, walks over to it and gets it. But one's emotional life is under no such control and often interferes with the absolute dominion the will has over muscular activity. One knows, for example, that it is foolish to make a remark and he does so; that it is perfectly stupid to resign a position because he is offended, and nevertheless has to go through a severe interior conflict to prevent himself from doing what he knows to be unreasonable.

If knowledge of the reasonable always determined conduct in the same way that under normal conditions I can rise, sit, stand or walk as I please, there would be no need of any moral virtues. The intellectual would suffice.

The intellectual virtues come to us by study, the moral by the hard process of developing habits of conduct and repeatedly forcing ourselves to do what we know is reasonable

in spite of all allurements to the contrary or fears and trepidations that make us hesitate to risk the consequences of living up to the dictates of reason.

The Intellectual Virtues. There are two classes of intellectual virtues, the theoretical and the practical, for the mind can speculate not only on the eternal truths but also on the way in which ideals may be carried out and concepts given actual expression.

In the first place one has by nature the power to grasp certain fundamental self-evident truths both theoretical and practical, for example: no effect without a cause; I must do good and avoid evil. The greater this power of understanding, the wider the range of self-evident principles. What to one man requires painful demonstration is to another clear and self-evident.

And then there is what Aristotle termed science or knowledge, the ability to demonstrate universal and necessary truths and arrive at new and certain conclusions in the various branches of investigation.

Over and above either of these and embracing both is wisdom, the power to put things together and coördinate the data of science and understanding so as to attain to the ultimate explanation of all things and see everything in human life in relation to our last end.

These three virtues were termed by Aristotle virtues of the theoretical intellect. The virtues of art and prudence are also intellectual virtues but are virtues of the practical intellect. The theoretical and practical intellects need not be distinguished as two complete circles from each other, but rather as the convexity and concavity of one and the same circle.

Art and prudence were well distinguished by the two crude but expressive Latin phrases: *recta ratio* *factibilium* and

recta ordo agibilium.¹ In plain English we would say that art is knowing how to do a thing, prudence knowing what to do. A man might know perfectly how to blow open a safe; but it would not be the right way and the prudent way for him to go about earning a living.

The Moral Virtues. The moral virtues have to do with putting in practice the dictates of reason in spite of all the opposition one meets with in one's own interior life. The fundamental moral virtues are fortitude, temperance and justice. Along with prudence they constitute what are termed the cardinal virtues² and are thus distinguished by St. Thomas.

"The good of man is to be as reason dictates. . . .
Now this comes about in three ways:

"FIRST. In so far as reason itself is rectified. This is brought about by the intellectual virtues.

"SECOND. Inasmuch as right reason is laid down in human affairs. This pertains to justice.

"THIRD. According as the obstacles to the establishment of right reason in human affairs are done away with.

"Now the human will is hindered in following the dictates of right reason in two ways. First because it is attracted by that which gives it a delight in doing something else than that which right reason demands. And this impediment is taken away by the virtue of temperance. Secondly because the will is held back from what is reasonable because of some threatening difficulty. To do away with this hindrance one needs fortitude of mind by which forsooth he resists difficulties of this nature, just as a man by bodily strength overcomes and repels bodily hindrances. Hence it is evident

¹ Cf. St. Thomas. *Summa Theologica*. 1. 2. Q. LVII, iv.

² These are starred in the schema given below.

that fortitude is a virtue, inasmuch as it makes man reasonable.”¹

The accompanying schema affords a general conspectus of the classification of the fundamental virtues. It might be well to note that the full and perfect concept of virtue is to be found in the moral and not in the intellectual virtues. Knowledge in itself is good but it may be used for an evil end. Only when used for a good end is it good in the full and perfect sense. To follow the good of reason in spite of all allurements or hindrances from our emotional life cannot but be good. Perfect moral goodness therefore resides in the will and not in the intellect.²

All these virtues except justice may be conceived of as giving expression to the primary duties one owes to oneself. Justice concerns formally God and our fellow man. Let us now consider in more detail the personal obligations of virtue.

CLASSIFICATION OF HUMAN VIRTUES

Intellectual Virtues.

VIRTUES OF THE THEORETICAL REASON, that is, states of mind by which the good of reason is defined in the abstract.

Understanding

Science

Wisdom

VIRTUES OF THE PRACTICAL REASON, that is, states of mind by which one knows in particular circumstances what ought to be done and how to do it.

**Prudence*

Art

¹ St. Thomas, op. cit., 2. 2. Q. CXXIII, i.

² Cf. St. Thomas, op. cit., 1. 2. Q. LVI, iii.

Moral virtues which enable us to follow the dictates of reason.

IN OUR RELATIONS TO OTHERS.

**Justice*

IN SPITE OF DIFFICULTIES ARISING FROM OUR OWN INTERIOR LIFE :

(a) Because of fears and interior blocks.

**Fortitude*

(b) Because of sensory allurements and all unreasonable attractions.

**Temperance*

PRINCIPLES

1. A being capable of understanding and choice has a duty to attain to its own perfection.

2. Whatever can be shown to lead, in the highest sense, towards the true good of the individual constitutes a proximate rule of conduct and a standard of duty.

3. The perception by the finite intellect of the end to which Divine Wisdom is leading it creates an obligation of obedience in that intellect to act in accordance with the Eternal Law, the Divine Will, Which directs all things to their perfect end.

4. Man has a duty to take a reasonable care of his own body, so as to develop and maintain a sound and healthy organism.

5. Man has a duty to educate himself.

6. Man has a duty to harmonize his own interior life so as to maintain interior peace and mental stability and so attain that fullness and perfection of beauty only to be found in a noble character.

7. Moral hygiene is of greater importance than physical or mental hygiene.

8. Moral hygiene is carried out by building up a number of deeply ingrained mental attitudes and well-established habits of conduct known as virtues.

9. Because knowledge of the reasonable does not of itself lead to reasonable conduct, mental attitudes or intellectual virtues must be supplemented by moral virtues or habits of conduct.

CHAPTER 6

PERSONAL OBLIGATIONS OF THE MORAL LIFE

One might sum up our positive personal moral obligations by saying that we must know the good and realize it in ourselves. Ethics might well be defined as the science which gives us this knowledge, particularly if we would broaden its concept so as to conceive of justice as not only involving the giving to others of what is their due, but also as a personal adornment of the good man which cannot fail without a crumbling of that very virtue which gives him his title to goodness. In fact moral goodness is like a bridge. All virtues must be present or it is no longer goodness, as a bridge does not bridge a river if a single span is lacking.

Reflex Maxims of Conduct. Intellectual virtue is fundamental in the science and practice of morality. We cannot choose the good unless we know it. We cannot act in a good and righteous manner unless we have principles of conduct. We must know what we have to do in order that we may do it. And so the first thing in the logical order is Understanding, Science, Wisdom, Prudence, Art, and then Justice, Fortitude and Temperance. The Understanding, Science and Wisdom that we need are primarily ethical. Natural science contributes little to the true Wisdom of life, but philosophy with its theodicy is a matter of fundamental importance. If we assume the general basal philosophic truths, the Understanding of first principles that we need concerns the maxims of morality, the most fundamental of which is the axiom: do good and avoid evil. More and more

this principle will be split into specific commands which one recognizes as self-evident moral maxims, until all the ordinary moral problems of life are no longer matters of question and argument but find, as it were, a reflex solution in thought and action as soon as they appear as real situations. The cashier never thinks of appropriating a penny that does not belong to him, the good man never hesitates over the possibility of getting out of a situation by a lie, an unworthy proposal is rejected at once with reflex spontaneity, and so on.

Ethics as a Personal Obligation. But as life develops various problems will arise that cannot be solved at once by our standard principles of conduct. It is the science of ethics which enables us to reason correctly and draw general conclusions by an analysis of situations and the application of our principles and standards of conduct.

Then there is the much greater problem of viewing our life as a whole, of seeing ourselves as a member of society with a work and a function, and society itself with its philosophy of history and its final goal, and our own trials and the sufferings of humanity and all that is in the light of eternity, so that we can interpret every situation by that true Wisdom which understands all things in their ultimate causes and sees the finite as illuminated by the Infinite, man and the world in relation to God.

It is a personal duty of prime importance for every man to extend further and further his realm of self-evident principles, to develop the power of reasoning correctly on moral problems and learn Wisdom as a philosophy of life which will enable him to interpret the world and its problems in the light of universal moral principles.

And then he must, by always dealing conscientiously with life's problems, learn to take easily and promptly the true ethical attitude towards every situation and earnestly desire

to act under all circumstances as genuine moral prudence will dictate.

Prudence. Life is a campaign that must be planned with prudence. Our opportunities must be grasped and dealt with prudently. Unfortunately, however, opportunities often come ere one has developed the virtue of prudence.

A child in a normal home with normal parents first learns obedience and then prudence. He does what he is told because he is told. But if his parents are wise they explain things to him as he becomes capable of understanding. They show him what life holds out for him and how it is to be attained. They provide him opportunities. He then commences to avail himself of his opportunities, not merely out of a sense of obedience to his parents, but also because it is prudent, not only in a selfish sense but also in a high moral sense, for him to make use of and not waste the means that are given him to attain his end and do his work in the world.

The folly of many students is surprising. They come to college, or enter training as a nurse, or start to study for a profession and they absent themselves from class as often as they dare, they waste the time in which they could study by a constant round of amusements; slowly the opportunities of attaining excellence in their courses slip by, youth passes never to return and sometimes one who might have had a successful career finds all openings barred or he is forced to accept the least when he might have chosen the best.

Neglect of opportunities is always a sin. Whether it is a slight sin, or a grievous one, may be hard to determine in a given case. Just as the person who keeps on stealing one little sum after another may finally commit a grievous sin, so also one who neglects this and that may accumulate neglects until his conduct is seriously sinful. One might say that it is a serious matter to undertake to prepare oneself for

a career and to spend his own or other people's money on it and some years of his life. If one criminally neglects his opportunities till the career is closed to him it is a grievous matter and a grievous sin.

Fortitude. Fortitude is a virtue by means of which we are willing to undergo all manner of trials and even death itself rather than be false to the good of reason. Its lack is one of the most common of human failings.

A man is not really brave and does not possess true fortitude unless he is willing to undergo death itself to maintain the good of reason. He may not be called upon to pay the extreme price of virtue, but if he is he must die rather than do wrong. If he fails in the test he has not true fortitude. One who has such fortitude will of course endure all sorts of minor ills rather than do wrong, but death is the supreme criterion of genuine fortitude.¹

One should look upon the whining in which many people indulge when they have to endure mental or physical suffering as an indication of the weakness of the moral virtue of fortitude. True fortitude suffers and endures without complaint. Looking for sympathy and going to various extremes to obtain it, showing off one's affliction, telling others of one's sorrows and how badly one is treated, is unworthy of the stability of a brave man.

A brave man must stand unbroken by the trials of life. If one gives up his daily work and fails in his duties he is broken and crushed by the storm of life. If one goes about looking for sympathy, he wavers and bends. There is a wholesome justifiable sense of personal dignity which stimulates one to bob up serene and smiling after every trial, no matter how bitter and hard to endure, and carry on in spite of all.

¹ Cf. St. Thomas. *Summa Theologica*. 2. 2. Q. CXXIII, iv.

One who gives up and quits because he is criticized or because he meets with opposition and rivalry is not a brave man. It is a moral duty to keep on doing one's duty no matter what is said or done, and step aside only when persistence would be itself an infidelity to duty.

Temperance. The virtue of temperance in our present age concerns mainly the allurements of Venus, Bacchus and Tobacco.

In regard to sexual allurements we must remember that reason dictates that the sexual function be exercised and indulged normally and only in married life.¹

Alcohol. In regard to alcohol it is perfectly clear from reason and the general concept of temperance that it is lawful for one to indulge in alcoholic beverages if he does so with such moderation that he avoids all evil consequences.

The evil consequences are twofold, acute and chronic. One who drinks to such excess that he cannot conduct himself with reasonable care and prudence is seriously delinquent. Here again circumstances are to be taken into consideration. One who is driving an automobile would have to be more careful about his limits than one who was sitting at his own fireside.

But even here the matter is not to be judged by the acute consequences alone. Even though one remains perfect master of himself, and his conduct remains always irreproachable, he may nevertheless be guilty of excess. For no one has a right to impair his health or daily efficiency merely to satisfy his cravings.

What must be the daily consumption of alcohol to lead, with fair probability, to an eventual impairment of health? Here again no general rule can be given and no one can say in virtue of his past experience what the future results will be. Anstie's rule gives some suggestion. Basing his esti-

¹ Cf. page 188 ff.

mate on the life histories of patients, he concluded that the maximum amount of alcohol which an adult can take without bodily injury is one and one-half ounces a day. This would mean three ounces of whiskey, or about five glasses of light beer or ale or a pint of claret, etc.

One must, however, not only maintain his health but also his daily efficiency unimpaired. Anstie's upper limit of tolerance as far as impairment of health is concerned is well above the upper limit of tolerance as far as normal efficiency is concerned.

Thus it was found that the power of a man to do gross muscular work is decreased if he takes day after day thirty-five grams of alcohol.¹

As much as fifteen grams of alcohol impairs one's skill in sticking needles through small holes.²

There are wide individual differences but the scientific work indicates that alcohol is not a mental nor a muscular stimulant and even quite moderate doses may well impair one's efficiency.

All this indicates that one who in this matter would avoid all excess will steer well over to the side of total abstinence and indulge in alcohol, if at all, only occasionally and then with great moderation.

There are various reasons why total abstinence is to be recommended.

Those who cannot drink at all without drinking to excess have a serious obligation to practice total abstinence.

¹ C. Tigerstedt and L. Kallioinen. *Beitrag zur Kenntnis der Wirkung der Alkoholkonzentration auf die Leistungsfähigkeit der Muskeln*. *Skandinavisches Archiv für Physiologie*, 1923, 43-44, 87-92.

² Cf. hereon: E. Kraepelin. *Klinische Psychiatrie*. 9th Ed. Erster Teil. 1927. Pp. 530 f. One will find here an excellent summary of the vast literature on this problem.

See also: Walter R. Miles. *Alcohol and Human Efficiency*. Washington: 1924. Pp. x + 298.

One might well say: I will practice total abstinence as a wholesome form of self-denial by which I will train myself so that I can more easily do without unlawful pleasures, and as an insurance against the acute and chronic effects that may so easily be incurred.

Tobacco. As regards smoking it is rather surprising that so many look upon it as in itself sinful.

In a series of forty-eight more or less wrong acts "girls smoking cigarettes" was ranked eighth, that is, one step worse than "playing golf or seeking other amusement on Sundays instead of going to church."¹

A group of high school boys looked upon smoking as worse than idleness, extravagance or dancing; high school girls, as on a par with snobbishness and worse than selfishness, gossip, idleness, extravagance and dancing.²

One is not obliged to forego the pleasures of life unless they are in some manner associated with that which is deleterious.

Tobacco leads to no immediate impairment of reason as does alcohol. In fact the same tests that show alcohol to be a mental and muscular depressant indicate no acute effects whatever from the ordinary use of tobacco.³

¹ T. M. Carter. Ethical attitudes of 623 men and women. *International Journal of Ethics*, 1932-33, 43, 279-293.

² G. S. Slavens and A. P. Brogan. Moral judgments of high school students. *International Journal of Ethics*, 1927-28, 38, 57-69.

³ Cf. hereon: Robert Lee Bates. The Effects of Cigar and Cigarette Smoking on Certain Psychological and Physiological Functions. Diss. Johns Hopkins University. Reprinted from *Journal of Comparative Psychology*, 1922, 2, 371-423; 505; 3, 37-50.

David J. Carver. The Immediate Psychological Effects of Tobacco Smoking. Diss. Johns Hopkins University. Reprinted from *Journal of Comparative Psychology*, 1922, 2, 279-302.

Vivian E. Fisher. An Experimental Study of the Effects of Tobacco Smoking on Certain Psycho-physical Functions. *Comparative Psychology Monographs*, 1927, 4, No. 19. P. 50. Gives a good review of the literature of the effects of tobacco smoking on mental work.

Richard Wahl. Ueber den Einfluss Kleinster Nikotindosen auf die Menschliche Psyche. *Zsch. f. d. ges. exper. Med.*, 1919-20, 10, 352-365.

While the acute effects of smoking on mental performance are really zero or so very slight as to escape measurement, there seems good scientific evidence that smoking may have serious chronic effects on the arterial system. It seems that nicotine stimulates the adrenal glands¹ and ultimately has a deleterious effect on the arterial system leading to local areas of degeneration.²

However, here again one must take into consideration the peculiar individual selective effects of drugs. One person may smoke relatively large amounts of tobacco daily with no untoward effects, another may be profoundly influenced after a few whiffs of a cigarette.³ The difficulty is that it is usually impossible to tell whether or not one is going to be affected until he feels the effect of an injury that has already taken place.

¹ Cf. W. B. Cannon, J. C. Aub, and C. A. L. Binger. A note on the effect of nicotine injection on adrenal secretion. *Journal of Pharmacology and Experimental Therapeutics*, 1911-12, 3, 379-385.

R. G. Hoskins and S. Walter Ranson. The vasomotor reaction of nicotine. *Journal of Pharmacology and Experimental Therapeutics*, 1915, 7, 375-383.

² Cf. J. Adler and O. Hensel. Intravenous injections of nicotine and their effects upon the aorta of rabbits. *Journal of Medical Research*, 1906, 15 (New Series 10), 229-239. See also: *D. Med. Wchnschr.*, 1906, No. 45.

K. Grassman. Ueber den Einfluss des Nikotins auf die Zirkulationsorgane. *Muench. med. Wchnschr.*, 1907, 54, 975-979. A fair summary with references to the previous literature.

G. Papadia. Arteriosclerosi sperimentale da nicotina. *Riv. di patol. nerv. e ment.*, Firenze, 1907, 12, 161-173.

Pertinent to this problem is the observation that smoking is an aggravating factor in thrombo-angiitis obliterans. Saul S. Samuels (Gangrene due to thrombo-angiitis obliterans. *J. of Am. Med. Assoc.*, 1934, 102, 436-442) says that Michels was apparently the first to call attention to this (*Klin. Jahrb.*, 1909, 21, 557) and that Schlesinger (*Mitt. d. Gesellsch. f. inn. Med. u. Kinderh.*, 1913, 44, 12) reported clinical improvement in two cases on cessation of smoking. He also reports work of Maddock and Collier demonstrating the vasoconstrictor action of smoking by the fall of skin temperature in the extremities (*Proc. Soc. Exper. Biol. and Med.*, 1932, 29, 487).

³ Cf. Gerhard Strooman. Ueber Adrenalinvermehrung im menschlichen Blute nach Nikotin. *Verhandl. d. Deutsche Gesellsch. f. inn. Med.*, München, 1925, 37 (Kong.), 418.

Decisions. In deciding about indulgence or non-indulgence in alcohol and tobacco or in setting a limit to the extent of one's indulgence both prudence and temperance must come into play. The part of prudence is fundamental, for it is the judgment of prudence which takes into consideration all the attendant circumstances and prevents the process of rationalizing one's way to a self-justification which leads to indulgence without regard to the dictates of reason. But it is temperance which steadies conduct and establishes a reasonable practice from which one never swerves. Often one needs fortitude as well to stand up against the mockery of those who cannot see the good of reason.

PRINCIPLES

1. Moral goodness is like a bridge. All virtue must be present or it is no longer goodness, as a bridge does not bridge a river if a single span is lacking.

2. Moral principles must be so developed in their application to the ordinary problems of life that proper conduct in any of the usual situations follows, as it were, with reflex spontaneity and is never a matter of question and argument.

3. It is a personal duty of prime importance for every man to extend further and further his realm of self-evident moral principles.

4. Life is a campaign that must be planned with prudence.

5. Culpable neglect of opportunities is a grave or venial sin, depending on the results that would naturally follow from our neglect.

6. One who has true fortitude will endure all manner of trials and even death itself rather than do wrong.

7. It is lawful for one to indulge in alcoholic beverages

and smoking, if he does so with such moderation that he avoids all evil consequences.

8. Those who cannot drink at all without drinking to excess have a grave obligation to practice total abstinence.

9. One might well say: I will practice total abstinence in regard to tobacco and alcohol, as a wholesome form of self-denial by which I will train myself to do without unlawful pleasures, and as an insurance against the acute and chronic effects which may so easily be incurred.

PROBLEMS FOR DISCUSSION

Discuss the following problems and situations from the point of view of fundamental ethical principles.

1. Smoking is a very great problem. The ones who do not smoke are much among the minority. I do not believe our training school is much different from any other. I think this dirty habit is one of the greatest things that helps to lower the standards of nurses. We teach health habits and healthy living and turn around and smoke. Off duty, yes! But a nurse is always a nurse whether in street clothes or in uniform. Some find it hard to refrain from smoking because all the rest do—others are on the fence, they don't dare to express their honest beliefs because of ridicule; they really don't want to smoke but think to be nice they must. We all know how habit-forming cigarettes are and also how little we regard people who don't act as they know is right. Is there no way in which the nurse can be encouraged to take a stand on the smoking question? Should we not as a group be recognized as "above" smoking?

2. No one knows what a state of mind I was in tonight when a graduate nurse on special duty took a cigarette an interne gave her and smoked right at the chart desk. I surely dread to think what the consequences might have been if she had been caught. As I was the night nurse in charge of the floor, I probably shouldn't have allowed it as I should have been blamed, too, if she had been caught, but she knew it was

wrong and so did the interne who gave her the cigarette. To me this was a very unethical thing to do, besides being against the rules of the hospital.¹

3. Some of the young graduate nurses on special duty go to the dressing room and smoke a while before going back to their patients at midnight supper. I don't know whether it is better that they should do that than smoke in the bathrooms on the different floors and have the student nurses see them do it.

4. I am working on night duty. I am a girl who likes to smoke. There is a certain time during the night when I long to smoke. Smoking is forbidden in the hospital while on duty. I often wonder if I couldn't get through the night a great deal better if I could have one or two cigarettes.

5. Today one of my patients said to me, "Are the nurses allowed to smoke before coming on duty?" I answered, "No." She said, "Well, that's funny. There's one nurse here, the blonde, who always has a terrible odor to her breath. I really don't object to smoking myself, but when one is sick it certainly upsets one."

6. I have known ever since I entered training that my classmates and the other nurses think me very prudish and old-fashioned because I do not smoke and furthermore thoroughly disapprove of it for all women and especially for nurses. Am I not free to choose my own beliefs and standards regardless of what others think?

7. How I detest hearing the men and nurses discussing this and that brand of cigarettes. I also know that the nurses accept cigarettes from the men patients. To me it seems that nurses cannot assume the dignity they should when they try their best to place themselves on the same level with the men.

8. Tonight the group of girls I was with smoked. What

¹ Smoking is not in itself a sin. The rules of hospitals do not bind under pain of sin except when they deal with what is in itself a sin. However, it would be contrary to prudence to break a rule which might involve serious consequences for the offender. Children have a moral obligation of obedience to their parents and for them to smoke, when forbidden by their parents, is a sin of disobedience.

should I have done? If I smoked I would have been breaking the rules of the school; if I didn't, the girls would call me a bad sport.

9. If we are asked by a patient to smoke with her, and she says that she will not tell, is it wrong for us to do it? Sometimes a patient is hurt if a cigarette or candy is refused, but what are we to do?

10. If a doctor offered a cigarette to a nurse whom he knows is in training, should she accept?

11. Does smoking reflect on a nurse's character, i.e., do you think that that alone should lower one's estimation of a nurse?

12. I knew certain girls were smoking in their rooms. Should I have reported it? I didn't.

13. Has the Nursing Bureau the right to refuse to keep on their list nurses who drink and smoke to excess only while off duty, but who are otherwise very good nurses?

14. When it is against the rules to drink and smoke and another nurse wishes to do so in my company, should I try to persuade her not to?

15. We had a speaker tonight on "Encephalitis." It just made me realize how uncertain my future is and I'm sure there are hundreds of student nurses the same way. I don't seem to have anything planned ahead, only to do a little private duty and there certainly isn't much in that. I just wish I had some definite goal and would strive to reach it.

16. One problem that I really have to deal with is the best way of spending my Sundays. I sometimes study on Sundays which should be done on week days. I do not find much interest in reading. I love to go to shows but they are expensive and the money could be used to better advantage.

17. Don't you think that nurses should all be at morning services, the non-Catholic as well as the Catholic? Some of the nurses don't get up in time for breakfast. Should not this be stopped? A couple of the sterile nurses fainted the other morning; later I found out they had had no breakfast.

18. A nurses' meeting in a town sixty miles from here—can't decide whether to go and lose my sleep all day and be too sleepy to do my work at night or let the work go and attend the meeting.

Went to the meeting. Saw a fine T.B. sanitarium and learned several things about the care and treatment of T.B.

19. Classes are from seven to eight and two to three. Should a night nurse consider the intervening time as giving her enough sleep so that she may go out for several hours or should she feel obliged to go to bed?

20. I can't sleep. I need rest badly. I wonder if I should take a pill to make me sleep?

I took the pill and I didn't feel badly at all when I awakened. It truly did me good. I, of course, won't get into the habit.

21. What shall I do when I get out of training? It keeps worrying me until I can't sleep. When I see the nurses who are out of work, I get frantic. I can't go home and I don't want to be dependent on my relatives.

22. I find it very difficult to utilize my time off duty. I feel guilty when I'm resting and really feel too tired to attend to my personal duties. I find it hard to do things for myself.

23. I have a slight sore throat today and I feel miserable. I suppose I should report it as I am working around patients, but maybe it will pass off and I do hate to lose the time.

24. If a nurse has T.B. of the glands or any other constitutional disease, should she continue training?

25. Should I allow myself to have "blue streaks" without trying to snap out of them?

26. Today was my half day. I went out to my aunt's. She helped me cut my white uniforms and I started sewing on them. I have to do something to save money if I intend to take State Board in January. It's hard to make all ends meet when one gets no help from home. Of course I don't expect it as they are too poor. When I first entered training

I had enough money in the bank to tide me over and quite a lot of it is tied up now.

27. I haven't a cent to my name. I have no winter clothes at all. I hate to ask my people for money. But what am I going to do? I won't go out unless I can look decent. I guess I will just have to wait and see what happens.

28. I need a new coat so badly it isn't even funny. I wonder if I should get one and pay for it on time?

29. Is it a proper thing for a nurse to hitch hike? It seems to be quite a common thing here up north.

30. My half-day I had an all night leave. I went out to my aunt's and spent most of the evening. Then about ten went to a party with a big gang. Had a very good time but got rather tight and smoked to a moderate degree. But if one doesn't you're just not one of the gang. I try to watch myself, not to drink too much and get completely out. It was about four when we arrived home, then I stayed with a girl friend of mine who used to be in training here. I suppose if the nuns here knew I'd get tight like that they'd have a fit. But if you go on a party and expect to be one of the crowd, and be a good sport, you have to do as they do and they all drink now—very few exceptions. I don't see anything so very wrong in it if taken to a moderate degree but it certainly cheapens a girl to drink.

31. Students held dance at Country Club House. Gave word of honor to Sister — that there would be no drink. One girl of the graduating class was terribly intoxicated. This is talked of about town but Sister has not heard as yet. I am wondering if it is my duty to tell her. Dance was held last Friday.

32. Do you think days should be added to a nurse's training if liquor is smelt on her breath before the case is investigated? It is a custom in our family and many of the other girls' families to serve wine with supper or dinner during the holidays. I drank it today before I ever thought of punishment attached to it.

33. What can be done about nurses who smoke and drink

frequently and who discuss these things with their patients? If you don't do these things you can't travel with the crowd.

34. Nurse (student) is offered a glass of beer in patient's room. If not taken the nurse knows the patient will feel offended. The nurse refused, saying that she could not take it while in uniform. Should another excuse have been given?

PART THREE

MORAL DUTIES OF MAN TO MAN

THE OBLIGATIONS OF TRUTHFULNESS

THE OBLIGATIONS OF CHARITY

THE MORAL OBLIGATIONS OF SECRECY

HATRED AND HELPFULNESS

PROPERTY RIGHTS

CONTRACTS AND INDEMNITY

**MASTER AND SERVANT: PHYSICIAN AND
NURSE**

COÖPERATION IN THE SIN OF ANOTHER

THE MORALITY OF CERTAIN OPERATIONS

THE MORAL PROBLEMS OF SEXUAL LIFE

PART THREE

MORAL DUTIES OF MAN TO MAN

CHAPTER 7

THE OBLIGATIONS OF TRUTHFULNESS

The Moral Obligation. Truth is a virtue which enables its possessor promptly and easily on all occasions to use words or gestures correctly expressing his interior thoughts and intentions. It is one of the virtues fundamental to the social order and belongs to that general group of good habits which pertain to justice, a virtue by which one man renders to another a debt that he owes.

“Man is a social animal. One man by nature owes to another that without which human society cannot be preserved. Now men cannot live together with one another unless they can have faith in one another, so that one will tell the truth to the other. Therefore, the virtue of truthfulness in some manner concerns the payment of a debt.”¹

The Concept of a Lie. A lie is an offense against the virtue of truthfulness; it is a falsification, through speech, writing, gesture or action, by which a man expresses one idea or intention, but has another in his mind.

In its bare essence it is this “*locutio contra mentum*,” a mode of speaking contrary to the mental content.

If one makes a false statement with no intention of de-

¹ St. Thomas. *Summa Theologica*. 2. 2. Q. CIX, iii ad primum.

ceiving, and those who hear know from the circumstances that the speaker is not intending to deceive, this is no real abuse of the function of speech and no offense against the social order. It is a material but not a formal lie.

Thus when one makes absurd statements in joke, when a maid gives the formal answer that her mistress is "not at home" and she is upstairs taking a nap, when one who is guilty pleads "not guilty" in a court, these are material lies but not formal and no abuse of the function of speech, for they are understood from the circumstances or are the employment of a formula with a well-understood meaning.

The Plea "Not Guilty." The plea "not guilty" in law does not really mean that the man professes his innocence before the court but merely that he stands upon the right given him by law and demands that his guilt be proved. Costigan quotes the following seventeenth century statement of the meaning of the plea in England at that time:

"A man may plead not guilty, and yet tell no lie, for by the law no man is bound to accuse himself, so that when I say not guilty, the meaning is, as if I should say by way of paraphrase, I am not so guilty as to tell you; if you will bring me to a trial and have me punished for this you lay to my charge, prove it against me."¹

Legal Defense of the Guilty. When a lawyer undertakes to defend a criminal who confesses privately to him that he is guilty of the crime with which he is charged, does he not at least act a lie and so do what is morally wrong?

The answer to that question is that it depends entirely on how he conducts the defense.

¹ John Selden. *Table Talk* (1689). See Arber's *English Reprints*, 1898 Ed., p. 65. Quoted by George P. Costigan, Jr.: *Cases and Other Authorities on Legal Ethics*. St. Paul: 1917. Pp. xxvii + 616.

In the first place the lawyer has a right to see that the prisoner is not convicted illegally.

"The first duty of the prisoner's counsel is anxiously to take care that his client be not illegally convicted. But he will be convicted illegally when the indictment is technically wrong,—when improper evidence is admitted, or when evidence not worthy of belief has been accredited. It is no breach of an advocate's duty to address the jury, though he may casually know, without being permitted to reveal, that the prisoner has confessed." ¹

On the other hand, if he knows that the defendant is guilty he cannot give the impression to the jury that he himself believes him innocent—much less can he say so.

He cannot adduce evidence to prove an alibi in favor of the prisoner, for then he would be maintaining and trying to prove a false statement.

The action of some criminal lawyers in going to any extreme without regard to truth in order to win their case cannot be too strongly condemned as unethical procedure.

The lawyer who knows that his defendant is guilty is limited to an honorable attempt to prevent an illegal conviction. If he preserves his honor he is likely to give the jury a suspicion that he knows the defendant is guilty, and so if he undertakes the case he should explain matters clearly to the client and let him understand that he will do all in his power to defend his legal rights but he can make no attempt to demonstrate his innocence.

The General Council of the Bar made the following statement:

¹ William C. Townsend. *Modern State Trials* (1850), Vol. I, p. 254. Quoted by Costigan, *op. cit.*, p. 311.

"Such a confession (of guilt) imposes very strict limitation on the conduct of the defense. An advocate 'may not assert that which he knows to be a lie. He may not connive at, much less attempt to substantiate, a fraud.'

"While, therefore, it would be right to take any objection to the competency of the Court, to the form of the indictment, to the admissibility of any evidence, or to the sufficiency of the evidence admitted, it would be absolutely wrong to suggest that some other person had committed the offense charged, or to call any evidence which he must know to be false, having regard to the confession, such, for instance, as evidence in support of an alibi, which is intended to show that the accused could not have done or in fact had not done the act; that is to say, an advocate must not (whether by calling the accused or otherwise) set up an affirmative case inconsistent with the confession made to him."¹

Moral Obligations of the Prosecuting Attorney. Much less can a prosecuting attorney attempt to convict a person whom he knows to be innocent. Any such attempt is not merely a lie but also an act of grave injustice to the one who is accused. Therefore if such an accused person is fined, the prosecuting attorney is bound in conscience not only to restore to him the amount of the fine but by a public confession to try to repair the injury done to his reputation.

If the defendant is put to death, the prosecuting attorney who conducted the trial, knowing from the outset or becoming convinced during the course of the trial of the prisoner's innocence, cannot lay the blame on the law, but is

¹ Statement of the General Council of the Bar, *The Annual Practice* (1917), pp. 2433, 2434. The statement from which these paragraphs are extracted was submitted to and approved by the then Attorney-General (Sir Edward Carson, K.C., M.P.) and by Sir Robert B. Finlay, K.C., M.P. Quoted from Costigan, *op. cit.*, pp. 339-341.

himself guilty of the death of an innocent man, and has committed murder merely for the vain self-complacency that he enjoyed in winning his case.

“The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. Suppressing facts or secreting evidence which might be of assistance to the accused is highly reprehensible.”¹

Various courts have expressed this concept, for instance as follows :

“The district attorney is a quasi judicial officer. He represents the commonwealth, and the commonwealth demands no victims. It seeks justice only—equal and impartial justice—and it is as much the duty of the district attorney to see that no innocent man suffers as it is to see that no guilty man escapes. Hence he should act impartially. He should present the commonwealth’s case fairly, and should not press upon the jury any deductions from the evidence that are not strictly legitimate.”²

The lie of the district attorney, who asserts the guilt of a man he knows to be innocent and secures a conviction against him, is an example of the most pernicious type of lie. It is of course a very grave sin. Its gravity arises not from the mere fact that the district attorney acts and speaks a lie, but from injury done to the defendant. This injury is grave and therefore he who is responsible for it is guilty of a grievous sin.

¹ A revision of A.B.A. Canon 5. Quoted by Costigan, *op. cit.*, pp. 284-285.

² Appeal of Nicely, 130 Pa. 261, 18 Atl. 737. Quoted by Costigan, *op. cit.*, p. 286.

A very different view of the lawyer's rights and duties has been expressed by Lecky:

"It is idle to suppose that a master of the art of advocacy will confine himself to a calm dispassionate statement of the facts and arguments of his side. He will inevitably use all his powers of rhetoric and persuasion to make the cause for which he holds a brief appear true, though he knows it to be false; he will affect a warmth which he does not feel and a conviction which he does not hold. . . . He will appeal to every prejudice that can help his cause; he will for the time so completely identify himself with it that he will make its success his supreme and all-absorbing object; and he will hardly fail to feel some thrill of triumph if by the force of ingenious and eloquent pleading he has saved the guilty from his punishment or snatched a verdict in defiance of evidence." ¹

That this is the practice of many lawyers is unfortunately true. It is, however, contrary to the oath required in a number of states for admission to the bar.

"I will not counsel or maintain any suit or proceeding which shall appear to me unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

"I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law." ²

¹ William Edward Hartpole Lecky. *The Map of Life, Conduct and Character*. (1889), pp. 108-113. Cited from George P. Costigan: *Cases and Other Authorities on the Legal Profession and Its Ethics*. 2nd Ed. St. Paul: 1933. Pp. 304-305.

² Opinions of the Committee on Professional Ethics and Grievances. American Bar Association. (No date.) P. 89.

Unless Lecky is willing to maintain that what pleases and satisfies an individual is right and what does not please is wrong, it is hard to see on what grounds of moral philosophy he would justify the lawyer who uses "all his powers of rhetoric and persuasion to make the cause for which he holds a brief appear true, though he knows it to be false," who appeals to every prejudice that will help his cause and then feels a "thrill of triumph" when he has "snatched a verdict in defiance of evidence" and his opponent's client must suffer the consequences of the lie he has perpetrated against justice.

Why It Is Wrong to Lie. A lie by itself, which does no one any injury, is an offense against the law of God and therefore wrong; but it is not grievously wrong.

All lies are wrong because they are unworthy of the dignity of human nature and because they are an abuse of the function of speech, which must be a reliable means of communication between man and man for the welfare of the social order.

Aristotle thus spoke of simple truth and falsehood as they are in themselves:

"And falsehood is *in itself* mean and culpable, and truth noble and worthy of praise. Thus the truthful man is another case of a man who, being in the mean, is worthy of praise, and both forms of untruthful man are culpable, and particularly the boastful man.

". . . We are not speaking of the man who keeps faith in his agreements, i.e., in the things that pertain to justice or injustice (for this would belong to another virtue), but the man who in the matters in which nothing of this sort is at stake is true both in word and in life because his character is such. But such a man would seem to be as a matter of fact equitable. For the man who loves truth, and is truthful where nothing

is at stake, will still more be truthful where something is at stake; he will avoid falsehood as something base, seeing that he avoided it even for its own sake; and such a man is worthy of praise."¹

Aristotle perceived how truthfulness adorns the nobility of man and lying stains his character, and, therefore, could see a virtue in the former and a vice in the latter.

As we have pointed out, whatever is truly reasonable is good, and what is unreasonable in conduct is bad. The use of human powers of expression in accordance with their natural function of manifesting our mind to others is reasonable. To abuse that function by expressing what is not in our mind at all is unreasonable. But a single abuse has only insignificant effects unless it involves more or less serious injury to someone else. A single abuse is no serious undermining of the confidence of mankind in the honesty of speech. Consequently, a lie in itself, that injures no one, is only a slight offense against the law of God.

False Charting. Statements made by a nurse in keeping her patient's chart concern not only the general trustworthiness of speech but the reliability of hospital records.² There are special reasons why these records should be trustworthy. However, false statements made in charting derive their gravity from the harm done or the genuine danger of harm that results from such dishonesty. Often a nurse does not know what harm might flow from false charting; she should, therefore, be particularly careful about the matter.

Though a lie is in itself a slight offense it cannot be justified by any good which one might obtain by telling a lie. The end does not justify the sinful means, even though the sin involved is only venial.

¹ The Works of Aristotle Translated into English. Vol. IX. Oxford: 1925. *Ethica Nicomachea*, by W. D. Ross. 1127^a29-1127^b7.

² See an interesting article by Nan H. Ewing, R.N. The legal aspect of clinical records. *American Journal of Nursing*, 1931, 31, 1407-1410.

Mental Reservations. When we are questioned by those who have no right to information, the best procedure is to speak up at once and decisively tell such persons that they must apply elsewhere for their information, that we have no right to make any statements.

At times, however, one is placed in a very embarrassing position. Though one may not lie he can use tact and ingenuity in inventing ambiguous but misleading statements or even employ what is termed a mental reservation.

Thus the story is told of St. Athanasius that when he was questioned: How far away is Athanasius? he answered: Not far away at all. Such an answer was misleading but evidently it was no lie.

It is also lawful to make use of a statement with an implied mental restriction which, however, might well be supplied by the questioner.

Thus if a nurse were questioned by one who had no business knowing: Is your patient pregnant or has she syphilis? she could either tell him that he had no business asking a nurse any such questions or simply reply, I don't know, meaning thereby, I do not know with any knowledge that I have a right to make public. Such an answer might well be taken as similar to the phrase "not at home," which merely means not at home to visitors.

However, when questioned by those who have a right to know, and particularly in court when under oath, one can make use of no ambiguous statements or reservations but must tell the truth, the whole truth and nothing but the truth.

Cheating in an examination is essentially a lie. One professes to know what he does not know. In general it causes no grave injury and therefore is not a grave sin. It is, however, a base act unworthy of the dignity of man.

Giving information to another in an examination is co-operation in his lie, for the examination professes to be an account of the candidate's information on entering the examination and not of what he then had along with what he acquired in the course of the examination. There is also an element of injustice to the other students where rewards of some kind are the result of class standing.¹ Should another student be deprived of a very valuable reward by cheating it would then be a grave sin on the part of the one cheating.

PRINCIPLES

1. Truthfulness is one of the virtues necessary to the proper functioning of the social order.

2. A lie is a falsification through speech, writing, gesture or action, by which a man expresses one idea or intention, but has another in his mind.

3. When a lawyer undertakes to defend a criminal who confesses privately to him his guilt, he has a right to see that the prisoner is not convicted illegally, but he may not attempt to prove anything he knows to be false nor profess to the jury his belief in the prisoner's innocence.

4. A prosecuting attorney may not attempt to convict a person whom he knows to be innocent.

5. No lawyer may counsel or maintain any suit or proceeding which appears to him as unjust.

6. Lies are immoral because they are unworthy of the dignity of human nature and an abuse of the function of speech.

7. When a nurse falsifies a chart she lies, and her guilt is grave or light according to the injury which would normally result from the false charting.

¹ Thomas M. Carter. Cheating as seen by college students. *International Journal of Ethics*, 1928-29, 39, 341-355.

8. When put in an embarrassing position by the questioning of one who has no right to know, it is morally justifiable to make use of mental reservations, that is, ambiguous and misleading answers.

9. Cheating in an examination is essentially a lie.

PROBLEMS FOR DISCUSSION

1. My patient was in a dying condition. Her brother came to see her but did not know her condition because it had been serious for several weeks. Should I have told him of his sister's condition even though he didn't ask me? I happened to be the only nurse in the department at the time he called.

2. Patient has an infectious disease. Family does not wish to have this known. Visitors are not allowed, but friends keep constantly inquiring by phone regarding his condition, also asking the nature of it. Should the nurse refer them to the family or simply state his condition, disregarding the rest of it?

3. While I believe no lie is justifiable, should a nurse feel that she has sinned if she lied at the doctor's request, a lie which according to the doctor's belief really saved the life of the patient? This incident happened in our hospital in a disagreement between two doctors as to which treatment should be carried out for the patient.

4. Is it wrong for a nurse to ask for a late leave if she is going to have a date yet she tells the supervisor that she wants to leave for some other purpose? Sometimes we know that a date won't be an excuse for a late leave; but we have our lessons and no particular reason for staying home. Is this action wrong?

5. What should you tell the patient when he needs a clean gown and the supervisor has some but will not allow you to take one for him? Should you tell what the supervisor said or tell the story differently by telling an untrue story?

6. This morning the supervisor asked me if I had noticed the marked dilatation in the eyes of one of my patients. If I

should say "Yes" it would be a lie, if I say "No" she will underline "Observant" on my efficiency record.

7. If a certain instrument must be boiled several minutes and an interne asks you to remove the article in less time, how could you arrange this so as to be honest with yourself and at the same time not tell the interne he is wrong?

8. Whether to look on the paper of another during a test.

9. A certain medication was ordered for an unconscious man due every hour. This nurse forgot to give it for three consecutive hours. What should she do? If she reported to the supervisor she'd have her time taken away, it would go on her report at the end of the month and the supervisor would not trust her again. The man had very little chance for recovery. Should she chart the medication as given or report it?

10. What to do when an older nurse told me to put down a certain figure on a chart when I knew that she had not really measured the amount and that the figure she had given me was a fictitious one.

11. Some nurse forgot to chart the removal of a drainage tube. The patient keeps a diary and it gives the date of the removal of the tube which was four or five days ago. Is it safe to take the patient's word for it?

12. A doctor orders an unusually large dose of medicine and orders it repeated every three hours. You feel almost sure that it will harm the patient. Should you give her less and chart the dose ordered or take a chance and give the large dose?

13. It is ten o'clock. 339's eight o'clock temperature has not been taken. If the doctor comes he will be annoyed because it is important in this particular case. Should I take it now and chart it at eight o'clock?

14. My head nurse told me to discontinue a proctoclysis which the doctor had ordered continuously and also told me not to record the fact that I had discontinued it. What should I do in that case?

15. If the head nurse in the department told the student to give Morph. gr. $\frac{1}{4}$ and then to record it as Aspirin gr. V, is she obliged to do so?¹

16. One of our doctors will not order a narcotic a second time on an operative so the interne told me to give it but not to chart it.

17. Recording the pulse and respiration the same as the preceding charting instead of counting it.

18. Today I took T.P.R. for the first time alone. Nearly every one of the patients asked me if she were normal or had a fever. I told them all they were just right even though some of them were running a temperature. I think it is better to do this than to tell them they are febrile and worry them. We received in class the times that a lie is excusable and this is one of them.

19. A mother gives birth to a still-born; she does not hear the baby cry and asks whether there is anything wrong with her baby. The nurse reassures her that everything is all right at the time. Should not the doctor be the one to tell her about the outcome of her baby?

20. A patient died on our floor today. A patient whom I had been caring for asked me if this certain person had died. I told her that he had. Perhaps this was not right, but I felt that she must have had some reason to believe that he had and if I had answered in the negative, it might have destroyed her confidence in me.

21. Yesterday one of the patients died. This morning one of the other patients asked me about her condition. If I told her it would aggravate her condition because she is a very nervous individual; if I didn't I would have to lie about it.

22. A patient coming out of ether kept asking if the doctor found cancer. Of course not being in the operating room I did not know, but I bravely told her that they didn't

¹ Those in authority can order only what is lawful. One must refuse to lie when one in authority commands it. Prudence dictates that the refusal be couched in polite and tactful language.

find cancer. This seemed to relieve her and she would be quiet after I told her that.

23. A patient knew she was getting sicker. There was no hope; she asked me if she was going to get better, and I also knew that there was no hope for her. What was I to answer?

24. If a patient was worrying about something you knew was true would it be all right to tell her the thing wasn't so?

25. If a patient is a nurse R.N. and wants to know her temperature should you tell her?

26. After making out the questions for an obstetrical examination I was tempted to give the questions to the girls of the class for it was a known fact that if one failed a dollar would be charged for each examination. They did not get the questions and no one failed.

27. To look on the paper of another during a test or to keep my eyes on my own. I succeeded in doing the latter; but it is such a temptation when there is one question you do not know.

CHAPTER 8

THE OBLIGATIONS OF CHARITY

The Necessity of Mutual Charity. The source of man's obligations to his fellow men is the fact of human social existence. As pointed out on page 244, and as is evident from the nature of things, God wills the social order. This is evident, for man and all that is natural to man and essential to his welfare is willed by God. Man is a social being. He is unhappy in complete isolation and cannot attain a perfect mental development except by contact with his fellow men. Society and the social order are therefore fundamentally necessary to the welfare of the human race. The social order is consequently ordained by God and as ordained by God must become an absolutely perfect society. All, therefore, that is necessary to a perfect social order is ordained by God, that is to say, the establishment of perfect social relations between man and man is laid down and ordained by the Eternal Law.

There are three virtues preëminently necessary to the perfect social order and these are charity, truthfulness and justice. No society can be entirely perfect unless these virtues attain their perfection in each of its members. This condition cannot be fully realized in this world, but it is an end towards which every individual member of human society should tend with all his moral strength.

If these virtues are utterly lacking the social order cannot be maintained; for it is evident that if every man hated every other man, lied whenever he felt like lying, and oppressed others and trampled on their rights no society could

continue to exist. As a matter of fact, fallen human nature is all too prone to slip into the vices of hatred, lying and injustice, and therefore offenses against charity, truth and justice are always sins because they tend to undermine the stability of the social order.

The Obligations of Charity Towards Our Fellow Men. Charity is the affection of true friendship in virtue of which we love others so effectively that we sacrifice our own desires and possessions to accomplish their welfare. It supposes, like friendship, a reciprocating affection on the part of those who are loved. God is the supreme object of charity, the friend of all friends Whom we must love above all things. To accomplish His will no personal sacrifice can be conceived of as too great. He is the utterly Supreme Intelligence in the perfect society into which the present social order is being transformed. Because we love Him and wish to see His ideals accomplished, we do our best to labor for a perfect society here on earth; and, therefore, try to help all with whom we come in contact. We love our fellow men because¹ God has destined them to the perfect society in which they will attain that blessedness and perfection which Supreme Intelligence wills to bestow upon the intelligent beings with whom He surrounds Himself. Charity is primarily a virtue of the will² by which we effectively work for the accomplishment of God's designs and the welfare of our fellow men. It is not an emotional state. In some of its acts it is apparently cold or accompanied by antagonisms that it takes an effort to control.

In a perfect society everyone will be honored and respected by the members of that society and receive effective coöperation and assistance in every undertaking.

¹ Cf. St. Thomas. *Summa Theologica*. 2. 2. Q. XXIII, i.

² *L.c.*, 2. 2. Q. XXIV, i.

Charity Therefore Implies Honor as Well as Service.

We cannot honor those of whom we have a low opinion. It becomes, therefore, a duty, born of the ideals of the perfect social order, to endeavor to maintain a good opinion of those with whom we come in contact. This does not mean the practice of a certain kind of self-delusion by which we blind ourselves to what is going on about us; but an attempt to give due weight to the fact that all that is good does not appear on the surface, and to discount our tendency to be harsh and unjustly severe in our criticisms of others. No man alive is utterly depraved. The worst child ever brought to a clinic has a mother or sister or someone who cares for him and sees something in him that makes him a dear little fellow; and it is there, though teachers and others see only the dark and unwholesome elements in his character. Charity demands that in the forum of our own interior judgment the character of another be given a just appraisal, and no hasty opinion passed on the evidence of the evil that is seen without due consideration being given to the fact that the unseen and unknown good would present various points which would call forth unstinted praise and admiration.

Detraction and Calumny. If we are to be careful of another's reputation in the forum of our own mind, still more must we exercise great pains to deal with his reputation charitably and justly before the forum of public opinion. Here we enter also into the field of justice, for in injuring another's reputation we violate not only charity but also the rights of another and may be bound to make good in some way the injury we do.

We may injure another's reputation by saying what is detrimental but true about him and this is termed detraction.

We may also injure another's reputation by publishing or spreading around false statements concerning him, and this is termed calumny.

If in either way we knowingly and willingly do another serious harm we sin grievously. One might be excused because one made a thoughtless remark or spoke without due reflection, but if we realize what we are doing and disseminate *true* or *false* statements that seriously injure another's reputation or prospects, we commit a grave fault and not a mere venial offense, and are bound to retract what we said, if false, and in any case repair in some way the injury done.

If the statement is false there is a double sin, but the gravity is to be measured by the harm that is done.

One should realize, too, that the harm done is dependent to some extent on the character of the individual maligned or calumniated. If a nurse said of a well-known and successful surgeon that he was careless in his aseptic technique it would probably do him very little harm; but if she disseminated such reports about a young man trying to establish himself it might be so injurious as to block his way to a successful career in surgery.

Furthermore, the story that is circulated does not have to imply a grave delinquency on the part of the one concerning whom it is told, in order to do him a grave injury. To say, for instance, that a young surgeon made an accidental slip in the asepsis in an operation in which the patient died would not imply a grave sin on the part of the surgeon, but it might do him a very serious injury.

On the other hand, to tell how a toper went on one of his many sprees would probably do him no harm at all and be passed off as a joke, although his drunkenness might have involved a serious offense against Almighty God.

The nurse, no more than any other person, may make any false statements, but she must be particularly careful how she circulates true statements that may be to the detriment of another. She has no duty to illuminate the public on

the relative merits and demerits of physicians. Physicians must also remember that a nurse has a reputation to make and sustain, and they should take as much care of the nurse's reputation as they expect a nurse to take of the physician's good name.

PRINCIPLES

1. The source of man's obligations to his fellow men arises from the fact of human social existence.

2. Charity, truthfulness and justice are necessary to the social order.

3. Fraternal charity is the affection of true friendship in virtue of which we love others so effectively that we sacrifice our own desires and possessions to accomplish their welfare.

4. Charity is primarily a virtue of the will by which we effectively work for the accomplishment of God's designs and the welfare of our fellow man.

5. Charity implies honor as well as service.

6. Detraction is the injuring of another's reputation by saying something detrimental but true concerning him.

7. Calumny is spreading false and injurious statements concerning another person.

PROBLEMS FOR DISCUSSION

1. One of the nurses with whom I now am working constantly talks about the faults of supervisors, doctors, students and internes while we go about our work in the diet kitchen. Is it the proper thing to just continually listen to these catty remarks and profit by her mistake or would it be best to "light" into her and remind her of her imperfections?

2. A patient had a Cæsarean Section performed and her baby died. The patient did not think for a moment of blaming the doctor but there was a great deal of talk among the nurses in which they blamed the doctor for operating too soon.

3. Several small articles and insignificant things have been missed by nurses. I stay in a great deal and I have a clue. I didn't catch the thief outright but have my suspicions. If my suspicions are correct it is a nurse who is a friend of mine. Should I tell or report the knowledge?¹

4. Should a supervisor discuss a student's attitude, conduct, etc., with other nurses of her own class? This supervisor in my opinion has a grudge against this nurse but to everyone else she is as she should be.

5. Can a nurse refuse to go to a house of ill repute to do private duty if it will point scandal toward her and ruin her personally although it may be an emergency case? What should a nurse do in a case like this?

6. Today I had a chance to go to a dance at a place which has a somewhat doubtful reputation. I decided that although I was in a town where I wasn't known, it would be wrong to do so if for no other reason than that it might hurt the reputation of the school.

¹ In regard to reporting the delinquencies of others, one should remember that no man is on general police duty.

If one knows a crime is going to be committed and he can prevent it by reporting to proper authorities, he is obliged to do so unless such reporting would entail serious injury to himself. One has a duty to preserve his own life and property for himself and those who depend on him; and a distinct good of a general character ought to be in sight if reporting a crime to be attempted is going to be followed by reprisals that endanger the life and property of the informant, or he should have some special bond of relationship to the one who is going to be injured and a duty to protect him.

But after a crime has been committed there is a duty of charity to the criminal and any reporting should be motivated by charity. Reporting becomes a duty only if it is likely to deter the offender from the repetition of his offense, or put a stop to a condition which is likely to endanger the morals of others.

CHAPTER 9

THE MORAL OBLIGATIONS OF SECRECY

The Obligation of Secrecy Binding on Physicians and Nurses. The nurse must treat information that comes to her in her official capacity as a nurse as an inviolable secret. She must often be present at the examination of patients and hear the questions and answers that pass between physician and patient. She may make no promise of secrecy, and none may be asked of her, but one may be bound to secrecy by the very nature of the circumstances in which one is placed. In fact, whenever any human being in any way obtains information which, if divulged, would be to the detriment of another, he is bound to secrecy by charity.

Does a nurse, like an attorney and a physician, come under the class of individuals who can receive privileged communications or information that they are not bound to divulge in court? It would seem that this depends in law upon the existence of special enactments and various circumstances.

Thus the United States Circuit Court of Appeals¹ ruled as follows:

“The exemption in favor of the physician and surgeon is statutory only, and for that reason there is little or no analogy between the clerk of the attorney and the agent of or assistant to the physician or surgeon. Thus in *Howe v. Regensburg*, 75 Misc. 132, 132 N. Y. Supp. 837, it was claimed that a dentist was within the privi-

¹ *S. W. Metals Co. v. Francisco Gomez*. 39 A.L.R. 1416-1423.

lege, but in answer to that contention the court said: 'At common law communications between physician and patient were not legally privileged. . . . The legal privilege seems first to have been recognized in New York in 1828. . . . To the extent therefore to which the privilege can now be said to exist, it must find its support in some statutory enactment. Whatever may be urged for or against the existence of the privilege, we can see no good reason for extending it by implication or construction.' "

The court then decided: "We are of opinion that the ruling of the court excluding the testimony of the nurse was prejudicial error."

It seems that the construction placed by certain courts on the statutes of various states not only allows a physician to refuse to give information about the secret illness of his patient, but unreasonably excludes his testimony, even to controvert statements of a witness, by the very fact that he was the patient's physician. The United States Circuit Court in the above decision refused to allow this interpretation to extend to nurses.

But it would seem that a nurse "assisting a physician to whom such confidential communications have been made by a patient, is an agent of the physician, and stands in the same relation of confidence to the patient, and may not be permitted to testify to such communications unless the privilege has been waived by the patient." (39, A.L.R. 1422.)

But a sergeant of the United States Medical Corps assigned to duty at one of the prophylactic stations may testify to the fact that application was made to him for venereal prophylaxis and as to the nature of the services he rendered (l.c.).

When the code specifies that "a professional or registered

nurse" enjoys the right of privileged information, it is held that this does not extend to a nurse who is not registered or professional and is present at conversations between a doctor and his patient (l.c., page 1423).

The Nature and Obligation of Secrecy. Information obtained which by its very nature implies that damage would be done were it revealed places upon the one who obtains such information a natural obligation of secrecy. One who violates such a secret offends grievously if serious injury is done, venially if only a slight injury is done. No one likes little uncomfortable revelations to be made concerning his private affairs, and charity demands of one who is cognizant of such matters that he should hold his peace. But if these matters are of serious import the obligation is a grave moral duty.

One may obtain information in various ways and then on request promise to keep silence about what he knows. Such a promise adds an obligation over and above any natural obligation from the very nature of the case.

Finally one may be given information only in virtue of a promise that he is bound over to silence. This entails the maximum obligation of secrecy.

The Obligation of Secrecy Is Not Absolute. Legitimate authority may have a right to information on the matter for the welfare of the person concerned or for the protection of some one else. For example, suppose a nurse knew that her patient had syphilis and she was asked by the father of the girl he was going to marry if it were so. The proper course would be to refer him to the young man's physician; but if for some reason this were impossible she would be justified in bringing about the postponement of the marriage by communicating her knowledge to the father. In fact circumstances may arise where charity to a third party demands that information be proffered in order to spare the

third party a greater injury than would arise by the revelation of a secret to the parties so intimately concerned.

Consider for instance the following case.

An employee of a telephone company was working in a Nebraska town and boarding with other men at a small hotel run by a Mrs. Bristol.

"He became afflicted with sores on his body and went to the defendant, a practising physician at that place, who took the history of the plaintiff's trouble, gave him a physical examination, and informed him that he believed his trouble to be syphilis. He further stated, however, that it was impossible to be positive without making certain Wassermann tests, for which he had no equipment.

"Defendant was the physician of the Bristol family, and acted as their hotel doctor when one was needed. He told the patient that there would be much danger of his communicating the disease to others in the hotel if he remained there, and requested him to leave the next day, which he promised to do.

"On the following day the defendant, while making a professional call upon Mr. Bristol, who was ill, learned that plaintiff had not removed from the hotel. He therefore warned Mrs. Bristol that he thought plaintiff was afflicted with a 'contagious disease,' and for her to be careful, to disinfect his bedclothing, and to wash her hands in alcohol afterwards. Mrs. Bristol, acting upon this warning, placed all of plaintiff's belongings in the hallway, and fumigated his room. Plaintiff was forced to leave."

The plaintiff sued the physician for damages for "alleged breach of duty arising from confidential relationship between defendant, who is a physician, and plaintiff, who was his patient."

The plaintiff lost his case and appealed to the supreme court of Nebraska which reaffirmed the verdict of the lower court.

In its decision the court ruled as follows :

“No patient can expect that if his malady is found to be of a dangerously contagious nature he can still require it to be kept secret from those to whom, if there were no disclosure, such disease would be transmitted. The information given to a physician by his patient, though confidential, must, it seems to us, be given and received subject to the qualification that if the patient's disease is found to be of a dangerous and so highly contagious or infectious a nature that it will necessarily be transmitted to others unless the danger of contagion is disclosed to them, then the physician should, in that event, if no other means of protection is possible, be privileged to make so much of a disclosure as is necessary to prevent the spread of the disease. A disclosure in such a case would, it follows, not be a betrayal of the confidence of the patient, since the patient must know, when he imparts the information or subjects himself to the examination, that, in the exception stated, his disease may be disclosed.

“In order that such a privilege of making a disclosure be available to a physician, however, he must have had ordinary skill and learning of a physician, and must have exercised ordinary diligence and care in making his diagnosis; otherwise he would be subjected to an action for negligence in making a wrongful report. *Harriott v. Plimpton*, 166 Mass. 585, 44 N.E. 992.”

When in a legal procedure a person is ordered by the court to give information as testimony, he should, in general, look upon his obligation of secrecy as terminated by the just demands of higher authority.

There is only one secret that binds absolutely under all conditions and that is the sacramental seal of the confessional. Under no circumstances, without the formally expressed permission of the penitent, may a priest reveal anything of little moment or of great moment that was told him in confession. This obligation is under all circumstances grave, and cannot be broken no matter what the consequences that may follow. Whether or not the law of any country recognizes the privileged character of the communication made by a penitent to a priest in confession, the priest is bound to secrecy and must not reveal what has been told him, no matter who demands the information and no matter what the penalty that may be imposed for refusal to violate the seal of the confessional.

PRINCIPLES

1. The nurse as well as the physician must treat all information acquired in an official capacity as an inviolable secret.
2. A physician or nurse enjoys the right of privileged communications by statute law only and not by common law.
3. A nurse, assisting a physician to whom the confidential information is given by a patient, cannot testify in court to such knowledge, unless the patient waives his right.
4. Both physician and nurse have a moral duty to maintain as an inviolable secret information about patients and their families which comes to them in the course of their duty.
5. This obligation of secrecy is not absolute and the welfare of others may demand that information be communicated to the proper persons or authorities.

PROBLEMS FOR DISCUSSION

1. A nurse who is authorized to do orthopedic work or give after-care to infantile paralysis cases came to town to-day. She called all of the doctors who were attending the recent cases and asked if she could be of use to them. One in particular who asked her to see his patient was giving absolutely the wrong treatment. If he asked her advice, was she not at liberty to tell him that he was doing the patient more harm than good?

2. Patient is a very nervous type. His family seems to excite him more or less. The nurse suggests to the doctor that no company be allowed at night, stating the effect it produces on the patient. Although she is doing this for the welfare of the patient, is she assuming too much responsibility?

3. Is it right for a nurse to watch a doctor making a serious mistake which may mean the patient's life and remain silent? Would it not be better to question him or report it rather than be "ethical" and be silent?¹

4. If a nurse is positive that a patient has broken bones, after the other nurse on the case has hinted to the doctor, is it her duty to keep after him until an x-ray is taken?

5. Should a nurse follow the doctor's order to a point when she knows a certain drug will be harmful? Would it be wrong to substitute something else instead?

¹ The condition assumed in this situation is this:

(a) A doctor is making a serious mistake which may mean the patient's life.

(b) The nurse observes this and *knows* how to correct or obviate the mistake.

(c) If she attempts to correct the physician, he may be very angry and more or less serious consequences might follow, such as the loss of her position, etc.

The general formulation of the problem is as follows: A human being is in grave danger of his life; another can probably (only probably, for the physician may tell the nurse to mind her own business) save him, but with probable danger to herself of a pecuniary nature. It would seem that if there is reasonable hope of getting the physician to correct the mistake by a few tactful remarks on the part of the nurse, she is in duty bound to make them. Any intelligent physician would be grateful for having his attention called to the matter.

6. Is it ethical to suggest a medication for a patient to the doctor? That is, if one thinks this will be of more benefit to the patient?

7. Last week one of the patients on my floor had a minor operation. She went home later. Today her husband called me up and told me her condition, asking me for advice. I referred him to the doctor. He called from his home about twenty-five miles from here. Should I have given him further advice? I did not feel that I should.

8. A condition arises regarding a patient which is probably caused through oversight on the part of the physician. The nurse is aware of this but keeps it in strict confidence. Is she not in duty bound to do so?

9. Patient disobeys the doctor's orders; tells the nurse not to mention this to the doctor. She feels it her duty to disregard the wishes of the patient and tells the doctor the truth. Is she not justified in doing this?

10. While out socially a nurse is frequently confronted with problems that really pertain to a physician. Friends will ask her the cause of certain ailments, also what remedies might be used.

11. Patient admitted with diagnosis of pneumonia. Very confidentially gave me his history of lues and G.C. I did tell the doctor and so made an enemy of the patient.

12. A patient asked me what medication I would give for hemorrhage. Also asked what the doctor gave. I told him. Wondered afterwards should I have done so?

13. What should a nurse do when a doctor deliberately exposes a patient when there is no reason for doing so? This did not happen in my experience but I was told of it by another nurse. Her action was to walk out of the room and tell the supervisor. When the doctor (who is well known for this kind of conduct in the room) asked the supervisor why the nurse walked out, she told him the reason.

14. A senior nurse tells a patient the work performed on him during an operation. The doctor is angered and demands that the nurse be dismissed. Should she?

CHAPTER 10

HATRED AND HELPFULNESS

Hatred. As charity is by its nature an act of the will in virtue of which we will what our friend wills and all that is for his true welfare, so hatred is an act of the will by which we set ourselves in opposition to another person, oppose what he wills just because he wills it, try to frustrate all that he desires and will that evil may fall upon him simply that he may be blocked and not for any ulterior purpose such as ridding the world of one who does so much harm. As thus defined genuine hatred is by its very nature a grievous sin. To hate God in this manner is the greatest of all sins. Fortunately, however, genuine hatred either of God or man is a rare sin. Emotional antagonism is not hatred. The feelings that rise in the heart and tend to express themselves in words are often recognized as unworthy and rejected before one, with genuine voluntary action, makes them his own. Again what one really craves is his own freedom from unjust oppression and that many others may be spared the effects of another's criminal life. But this is in itself good. Genuine hatred is present only when one by deliberate voluntary action wills that another should suffer ill because he is himself and not another, and that independently of the general good.

Danger of Hatred. Not only is true hatred a very grave sin but it is also a dangerous state of mind from the point of view of mental hygiene. One hates not only a single individual but also everyone and everything with which he is associated. And so the hatred of one person leads to the

hatred of a whole group of individuals. This hated group is ever being extended and the ultimate state of him who hates is complete isolation from all society and mental disaster. Unlike sadness, hatred tends to persevere rather than clear spontaneously. On the other hand, it is more amenable to personal efforts at control than sadness. But without this personal effort, which had best be vigorously initiated at the first signs of antagonism, hatred tends to a dangerous and incurable mental state.

It is a crime against the perfect social order, but not the greatest possible crime against society, for crime against our fellow men is measured by the injury done and one who gives expression to hatred by personal violence to others commits a greater crime than he who merely hates.¹

Minor Antagonisms. The little antagonisms which fall short of formal hatred are common occurrences whenever a number of individuals are associated together. They are most fertile sources of disturbance to the establishment of that perfect society in which all will love God and respect and serve each other for the love of God. It is very important that one should rise above these personal animosities and suffer many encroachments on his liberty and rights for the sake of the general peace.

When some animosity has arisen between two individuals the one who was the first to disturb the peace should be the first to make an attempt to restore it. If he fails, after a time, the other should not stand upon his dignity and make no efforts to reestablish peace, but in all charity should make some little attempt to restore the former friendly or peaceful relations. The silly but altogether too common practice of "not speaking as we pass by" must not be maintained too long lest it should lead to formal hatred which is in itself a mortal sin. In fact, to persevere in refusing to give to an-

¹ St. Thomas. *Summa Theologica*. 2. 2. Q. XXXIV, iv.

other the ordinary signs of friendly peaceful relations usually indicates that an antagonism is developing into formal hate.

Revenge Is Always Wrong. By revenge is here meant the attempt to do another an injury in return for the injury he has already perpetrated. If, for instance, nurse A makes a mean cutting remark and nurse B seizes the thermometer of nurse A, throws it on the floor and breaks it, she has done an unjustifiable wrong to nurse A and is bound to buy her a new thermometer.

It is not revenge to demand that another make good the injury he has done. A suit for damages is not, strictly speaking, an act of revenge.

Obligation to Help Others. The welfare of society and the individuals who compose it demands coöperation and helpfulness on the part of the members. It happens at times that unless one person obtains help from another, who is in a position to be of assistance, he will suffer a very grave injury. One who refuses such help, which might readily be given, is then responsible for the harm that befalls the one in distress. Such a refusal is grave in proportion to the injury that is allowed to take place.

In considering one's duty in the matter of helping another, one must take into account the character and extent of his need.

The spiritual welfare of another is greater than his temporal welfare and, therefore, demands on our part greater effort to be of assistance.

His necessity may be more or less extreme and our ability to help more or less easily made effective.

Our maximum obligation of helpfulness arises when one is in extreme spiritual necessity, for example, when one is dying with his sins upon his soul. A priest would be obliged to risk his life in going to him and no danger or difficulty would excuse him from making an attempt to get to the

dying person so long as there was a reasonable chance of success. In like manner, a nurse would be obliged to do everything possible to obtain the priest. No question of past wrongs which the dying man had done to the priest or nurse or anyone else should ever enter into consideration.

One might not be in extreme spiritual necessity but merely in serious moral danger. The problem which arises most often here is that of "fraternal correction." A more experienced person often has the duty of warning another who is less experienced. Neglect of this duty may be a grave sin. The obligation arises, not after we have learned that someone has done wrong, but when we feel that our warning and advice might prevent him from doing wrong. That the obligation to warn and advise should weigh upon me seriously it must be evident that the one to be warned is in grave danger, that my talking matters over with him has good prospects of saving him from his danger, and that I should be more likely to succeed in the undertaking than another who would also be willing to take the affair in hand.

There is no obligation upon one to give to another advice which he feels quite sure will be rejected, unless in some manner he stands over that person in a position of authority. Thus a superintendent of nurses should give warning and advice whenever she thinks that it is necessary. If her warnings are neglected she is not responsible for the misfortunes that may happen to the student nurse; but if she fails to warn when she knows that warning is badly needed she has been unfaithful to her duty and may be in part responsible for the consequences. Furthermore she, unlike a fellow student or friend of the one in danger, is in a position effectively to demand a change in behavior.

The wealthier members of society are bound to help the poor. But to what extent is one bound to help others? One who draws a good salary and never gives anything to the

poor is in these times of distress gravely delinquent in his duty. In cities where all charities combine in a community chest and one receives a notice saying that a person in his position should give a certain specified sum, he may take that as a fair estimate of the extent of his obligation. He is not bound to dispense his charity through the community chest, but in many cities it would be the part of prudence to do so.

PRINCIPLES

1. Formal hatred is an act of the will by which one sets oneself in opposition to another person, opposes what he wills just because he wills it, tries to frustrate all his desires, and wills that evil may fall upon him just that he may suffer.

2. Formal hatred is a very rare sin, but of itself a grievous sin.

3. Hatred is a dangerous emotion because it tends to spread all over one's mental life, isolate him from society and so precipitate mental disaster.

4. One has a moral duty to rise above his natural animosities and sacrifice his sense of personal dignity to maintain or reestablish peace with others.

5. Revenge is always wrong.

6. Whenever we meet a person in need we have a moral obligation to sacrifice our time and money to be helpful. The greater his need the more serious our obligation, and the greater the sacrifice we must make to be true to the moral ideal.

PROBLEMS FOR DISCUSSION

Discuss the following problems in the light of what has been said above.

1. A girl friend, a recent graduate, has been going at "high speed" ever since she has been out of training. Every

night a new boy friend, drinking and smoking. She has a serious heart condition although it does not prevent any of these pleasures as yet. She is a good girl at heart. Her alibi is that she is going to live her remaining five years in real fashion. I've talked and pleaded with her that if she doesn't care for her own reputation and health she should consider her mother and father, her training school and profession. I do feel that eventually she will see my point and give up these bad habits. But—I'm tired of preaching, have done it for two years now, ever since I noticed the inclination. Why should I worry myself about her affairs? She only laughs at my efforts. I'm sick at heart about it all; the only thing I'm going to do is pray for her from now on.

2. It is difficult to get along with one of the teachers of the school. She is a very good teacher but out of class when she is around the home and with the girls she seems to freeze. If you give her the greeting of the day she never answers, smiles, or even nods her head. I hate to be rude but I've quit speaking to her.

3. Today I was requested by my employer to ask a co-worker and a close friend of mine for her resignation. This nurse holds a position on the same level as mine. On the other hand if I did not do as I was asked, a story which would ruin her and which I do not believe is true would be started.

4. Is it wrong for two or more nurses to joke about their patients among themselves when off duty? Many humorous incidents occur daily; and no actual harm is done by discussing them later. That is, we hope no harm is done. Is there?

5. A nurse is continually taking drugs without consulting her superiors and no argument seems to be able to convince her that it is dangerous. If it is reported to the superintendent she will be expelled. How can one prevent her from doing this without her expulsion?

6. A group of students in the dining room talked about everyone in the hospital from the highest to the lowest. To hear them talk one would think they could handle any position in the hospital better than the one that has it.

7. I went into a room to help a student with a patient who had had a thyroidectomy done. This nurse said to me, "This one is such a pest, she keeps me going all the time." The patient could not help but hear her.

8. If a student nurse becomes quite infatuated with one of the doctors on the Board, what should her closest friend do in regard to this matter, since she knows it is not right?

9. When patients are criticizing another nurse in your presence, what is the best thing to do under such circumstances?

10. A Catholic physician is convalescing in the hospital from the "flu." He is up and about and intends to go home Sunday evening. He makes no attempt to attend Mass that morning although there is a Chapel in the hospital. Should the nurse make some remark to him about this?

11. A very ill patient seems to be gradually growing weaker (to the nurse). The intern is satisfied. He states that he does not think she is ill enough to call the priest or her family. Should the nurse, knowing what it would mean to her patient's family if she should die without the Last Sacraments, call the priest on her own accord?

12. Following an operation for an incomplete abortion, the embryo intact in sack. Should the nurse rupture sack in order to baptize it or rather if the doctor wishes to keep specimen as it is, what should she do?

CHAPTER 11

PROPERTY RIGHTS

Fundamental Principles. As society is now constituted, individuals may acquire property, use it and dispose of it. Acquisition comes about ordinarily by gift (*donatio inter vivos*), inheritance or personal toil. When one has acquired property in this way he has a right to use it and dispose of it. And when one takes or injures the property of another he is said to infringe upon his rights, and is bound to repair the damage done or restore what he has unjustly taken.

Whether or not society might be differently constituted so that the state would hold all property and administer it to individuals is a theoretical discussion which does not affect the present rights of individuals in society as it is now constituted. Such a condition exists in religious communities where the members are bound by a vow of poverty and possess all things in common. It is very doubtful that mankind in general will ever attain to such a plane of development that individuals will be able to live in peace and contentment under the régime of religious poverty and the possession of all things in common. Hitherto all practical attempts of this nature outside the religious life have ended in failure.

Taking society as it is and human beings as they are, it is necessary for the order and development of human relations that men be able to acquire, use and dispose of property with a guarantee of stability of ownership and freedom of disposition. All that is necessary and truly helpful for the development of humanity, by the fundamental thesis of this

work, is willed by God and therefore embraced in the Eternal Law. Should such a development of the human race take place that the property rights of individuals would be no longer necessary and useful for human development, that condition would then constitute a stage of progress and a whole set of new rights would arise out of the altered condition of humanity. But such a stage is not in sight and individuals now are endowed by the Eternal Law with the right to acquire, use and dispose of property.

Not only do individuals, as individuals, have property rights, but they may, as corporate units, by agreement among themselves possess various goods in common, use these goods and dispose of them in accordance with the agreement into which they entered. In this way families, societies and the state itself, as corporate units, hold, use and dispose of property.

The state has no right to dispose of any property except that which it has lawfully acquired. It cannot lawfully confiscate the property of the individuals that compose it nor of societies or corporations lawfully organized within its domains. For the individual and the family and various organized groups of individuals exist prior to the state which owes its existence to these individuals and organized groups. The very purpose and end of the state is to protect them. The state has no right to imprison, mar, or in any way injure the individuals that compose it (except it be necessary to protect the social order against violence and crime), nor to hinder their lawful grouping into societies and legal bodies, nor to deprive individuals or groups of property they have lawfully acquired, nor to interfere with any disposition of their property which entails no injury to the rights of others.

Stealing and Restitution. Whoever injures the right of another individual does an unreasonable act and one that

is against the law of God and therefore a sin. The Eternal Law wills all that is for the true welfare of man and society and, therefore, by implication prohibits all that is against the welfare of the individual and disturbs the order of society. As society is now constituted it is perfectly clear that individuals would often suffer and the general order be disturbed by anyone taking from another anything he pleased. Thus the future care and education of children often depends on a family being able to save. If one takes money that the father or mother have been saving he injures the parents by depriving them, to the amount of the theft, of their right to educate their children and he injures the children by interfering with their education. And so a theft in many ways ramifies into human relations, infringing rights and disturbing the good order of society.

No one can possess anything without a title. What one unjustly takes does not belong to him. It still belongs to the owner and must be restored to him. If one has used it, or lost it, or destroyed it he must, from his own possessions or by his labor, restore what he has unjustly taken or in some way make good the loss, otherwise the injustice he has done remains and the good order he has disturbed is not re-established. Suppose for instance that a father has saved five thousand dollars for the education of his children. Someone by robbery or fraud obtains possession of this money. Only by its restitution will the father be able to carry out his plans of educating his children and the children receive their education. It is evident that it is wholly insufficient for the thief to express his sincere regrets over what has occurred. He must make good the damage he has done. And so in general we are bound to make good in some way every injury that we have freely and deliberately committed against another human being.

The Gravity of Theft. St. Thomas makes the gravity of theft arise from the fact that it is an offense against charity.

“A sin is mortal because it is an offense against charity in as much as charity is the spiritual life of the soul. Charity consists primarily, indeed, in the love of God; but secondarily in the love of our neighbor in virtue of which we will and work for the good of our neighbor. By theft one does an injury to one’s neighbor in his goods. If men stole from one another whenever the occasion might arise, human society would perish. Hence theft is a mortal sin because it is an offense against charity.”¹

Because theft is a sin against charity as well as justice, we cannot reestablish that due charity towards our neighbor which was done away with by theft until we “will and work for his good” at least to the extent that we make good the loss which he sustained by our own criminal act.

The injury done our neighbor admits, however, of degrees. One may take small and trifling sums of money or unjustly lay hands on a vast fortune. We do not gravely injure charity or justice by trivial acts. Therefore such trivial acts are venial, not mortal sins. The question arises: What must be the amount of money stolen before it becomes a grievous sin? No hard and fast rule can be laid down.

Lehmkuhl writes as follows:

“Many look upon a day’s wages as a relative standard of a grave matter, or that amount which the father of a family needs for his support and that of the family. (Cf. S. Alph. III, 527.) Such a standard indeed, derived from the ordinary condition of men which ex-

¹ St. Thomas. *Summa Theologica*, 2. 2. Q. LXVI, vi.

cludes great poverty and abundant riches, does not seem incongruous.”¹

In view of the changing value of money and of wages the rule seems to be very appropriate. One should bear in mind, however, that the poor suffer more than the rich from loss of money and that they are more easily injured when the little that they have is stolen than are the wealthy.

One should bear in mind, too, that when small amounts are taken at successive opportunities from the same individual, society, corporation, or hospital, etc., their value sums up till finally it becomes a grave amount. But in regard to the summation we must consider the fact that one can more readily bear a loss that is distributed over a considerable period of time than a big loss sustained all at once. Likewise when a sum of money is taken from a group of individuals each suffers only a fraction of the total loss. Definite limits cannot be set. But one should remember that venial sins of theft are most dangerous to indulge in, not only because stealing small sums finally adds up to a big sum, but because it is so easy to form the habit of helping oneself to an open source of revenue whenever one is in need. This is particularly true of cashiers who have the good intention of paying back. Another vicious habit of cashiers is to draw their salary ahead of time until finally they will have to work for months without any salary in order to meet their obligations. The excuse so often made is: I am not stealing but only borrowing, for I intend to pay back. If one takes money in this way from a member of the family or an intimate friend on the basis of a well-established understanding and reports the amount taken at the first opportunity, it is not stealing. In general one who borrows and is afraid to report at once must look upon the borrowing as

¹ A. Lehmkuhl. *Theologia Moralis*. 11th Edition. Freiburg: 1910. I, p. 633, § 1114.

stealing, for he has appropriated the goods of another, certainly without any actual permission, and, deductively, without having been able to presume permission.

The obligation of restitution is grave, if the theft was grave; venial, if the theft was venial. But this does not mean that one may neglect with impunity the minor obligations of restitution. Only when one can feel quite sure that the owner would be reasonably willing for one in need to appropriate his property should one fail to restore promptly anything he has taken. In extreme need, i.e., in starvation, it is generally conceded that one does not steal by taking what is necessary to save his life and in such a case there would be no obligation to restitution. Those who have authority over others, especially over children, should teach honesty by insisting on restitution even for petty thievery.

PRINCIPLES

1. Taking society as it is and human beings as they are, it is necessary for the order and development of human relations that men be able to acquire, use, and dispose of property with a guarantee of stability of ownership and freedom of disposition.

2. Not only do individuals, as individuals, have property rights, but they may, as corporate units, by agreement among themselves, possess various goods in common, use these goods and dispose of them in accordance with the agreement into which they entered.

3. The state has no right to dispose of any property except that which it has lawfully acquired.

4. Whoever injures the right of another individual does an unreasonable act, one that is against the law of God and therefore a sin.

5. One must restore what he has unjustly taken or in some manner make good the loss, otherwise the injustice he

has done remains and the good order he has disturbed is not reestablished.

6. The injury done by theft admits of degrees.

7. A theft becomes a grave matter when it amounts to an average day's wages, or a sum necessary at the time to support a man and his family for one day.

8. The obligation of restitution is grave, if the theft was grave; venial, if the theft was venial.

PROBLEMS FOR DISCUSSION

Discuss the following incidents from the point of view of their gravity and the obligation to restore.

1. Nurse A while en route to the supply cupboard with hands engaged places the thermometer tray there until she disposes of the rest of the load of linens, etc., returns ten minutes later to find the thermometer (her own possession) taken and in place an inferior one.

2. I wanted to go to the movies. I didn't have enough money. I wondered if it would be all right to take the money from my friend's pocket, tell her I took it, and pay her back as soon as I got it. I didn't know what to do. I finally didn't go at all.

3. Nurses seem to have a terrible habit of borrowing one another's belongings. Some of them do it so habitually that they think nothing of "borrowing" without asking and sometimes forgetting to return what they took.

4. Simply can't sleep days. Stole an Amytal Comp. gr. $\frac{1}{2}$ from the floor to sleep tomorrow. Is it wrong? I can't see why my sleep isn't important—haven't the money to buy my own.

5. I walked out of a drug store and forgot to pay for the orange juice I had ordered. After I thought about not paying I refused to go back and pay for it.

6. Delicacies for a sick patient were eaten by a nurse. The patient had to go without them and slept very little.

7. We got paid today. They forgot to take out for my vacation. I didn't know whether to say anything about it or not.

8. Whether or not to take crackers from the special diet kitchen for my own use.

9. When a person borrows something I think that she should always see that it is returned or make good the loss to the one who loaned it. A few weeks ago I loaned a small article to a girl and she hasn't returned it yet. I went to her but she didn't have it. She didn't try to find it or offer me any suggestions of any kind. I always try to help others and I appreciate any help which I receive, but I do not like ingratitude.

10. I paid my alumnae dues to my superintendent who was to turn them over. I have never received a receipt or card from the alumnae and I feel positive that the superintendent has forgotten the money. Should I remind her of it or not?

11. I took some candy from a girl. I left a note telling her so. I wonder if she will be angry.

She was very angry. She didn't say so to my face but she talked behind my back.

I gave her fifteen cents. It more than paid for the candy I ate. I feel better now.

12. Today a girl borrowed my watch. When I went after it she had gone off duty and left it on a table. Someone knocked it on the floor and broke it so that it could not be repaired.

13. A patient's gown thrown down clothes chute by mistake. If not found, should person sending it down be made to buy another?

CHAPTER 12

CONTRACTS AND INDEMNITY

Definition of a Contract. A very simple definition of a contract was given by Justice Field of the Supreme Judicial Court of Massachusetts: "A contract is an agreement which creates an obligation."¹

For an agreement to create an obligation in conscience it is necessary that

(a) what is agreed upon should be morally good. No person can place upon himself an obligation to do a moral wrong.

(b) the contracting parties must be mentally capable of making a contract.

(c) they must intend to assume a mutual obligation.

(d) they must express their consent.

Given these conditions, a contract is an agreement which creates a moral obligation.

From the legal point of view a contract may be defined as "a promise or set of promises to which the law attaches a legal obligation."² Contracts may be morally binding although they are not legally enforceable. On the other hand if in writing out the terms of the contract an essential error were made, and in signing, one had no real intention of agreeing to what was erroneously written but to something quite different, he would not be morally bound by the letter of the contract though he might be unable to prove that an

¹ *Ashcroft v. Butterworth*, 136 Mass. 514.

² Samuel Williston, *The Law of Contracts*. New York: 1920. Vol. I, p. 1.

error was made, and so a contract not morally binding would be enforceable in law.

Besides express written and verbal agreements creating an obligation, one assumes obligations by undertaking various offices and functions. When the nurse undertakes the care of a patient, when the physician takes over a case, when the lawyer accepts the cause of his client, though there may be no written or verbal contract, there is in the very nature of the situation an agreement creating an obligation. Let us now see just what is the specific nature of these contracts.

THE CONTRACT BETWEEN THE NURSE AND HER PATIENT

The nature of the nurse's contract with the patient was defined by the Supreme Court of Illinois as follows :

"The agreement 'to nurse' an adult person necessarily conveys the idea that the object of the care is sick or is an invalid. It means more than mere watchfulness. It means such care of the person and attention to the surroundings as will conduce to the comfort and hasten the recovery of the patient. The practice of medicine, within the meaning of our statute regulating the practice of medicine, and as generally understood, necessarily requires a knowledge of all those things a professional nurse is supposed to know. It embraces much more. It includes the application of knowledge of medicine, of disease, and the loss of health." ¹

When C. A. C. Williams was a patient in a hospital of the Pomona Valley Hospital Association "and unconscious, a servant of defendant placed hot water bags on or about plaintiff's feet in such a careless and negligent manner that

¹ Oswald v. Nehls et al. 84 N.E. 622.

plaintiff's feet were badly burned and scalded, from which he suffered damages."

The hospital won the first trial but the case was appealed, and the decision was reversed and a new trial ordered.

The District Court of Appeal, Second District California, speaks thus of the duty of a nurse:

"The duty of a nurse, and assuming that a nurse must only exercise the ordinary care which a trained and skilled nurse would be required to use, is a continuous duty. Dealing, as she was, with an unconscious patient, unable to care for himself, it was her duty to observe the effect upon the patient of the application of the remedy as much as it was to test its temperature in the first instance. The powers of resistance, the condition of the patient, must of necessity have much to do with the application of remedies, either by a physician or a nurse, and all this duty could only be observed by a constant and unremitting care and attention, which is just as obligatory upon the nurse as is the duty of applying the remedy directed by the physician in charge."¹

Personal Responsibility. An orderly or nurse has a personal responsibility and a *charitable institution* is not responsible for their negligible acts.

Margaret Phillips was a paying patient in the Buffalo General Hospital. "Through the negligence of an orderly who placed a hot water bottle against her body while she was in bed, unconscious after an operation, she was severely burned." The Supreme Court of Illinois concluded that

"the orderly so far as he engaged in nursing, under the authority of the hospital, was supposed, like other

¹ Williams v. Pomona Valley Hospital Ass'n. 131 Pac. 888-890.

nurses, to act on his own responsibility. If his act was unauthorized by the hospital, the rule of respondeat superior does not apply. In neither case, as between hospital and patient, was his negligence the hospital's wrongful act." ¹

It would seem by inference that a nurse employed by a charitable hospital is personally responsible for her own negligence.

A physician becomes personally responsible before the law for a nurse whom he personally directs and is legally responsible for her negligence.

"A physician is not liable for the negligence of hospital or other nurses, attendants, or internes, who are not his employees, if he has no knowledge thereof, or has no connection therewith, or if not discoverable by him in the exercise of ordinary care, or unless he is negligent in permitting them to attend the patient. But it has been held that, where a hospital nurse, although not in the regular employ of an operating surgeon, is under his special supervision and control during the operation, the relation of master and servant exists, and the surgeon is liable, under the doctrine of respondeat superior, for the nurse's negligence." ²

A charitable institution is required to use due care in the selection of its staff members, nurses and servants. If it does not, it *may* be held responsible for the negligent action of those whom it selects for this or that duty. Thus in Texas, a nun in charge of a ward told a kitchen girl, only twelve to fourteen years of age, to place a hot water bottle in the bed of a patient under an anesthetic, with the result that "the calf of the leg was almost entirely burned away,

¹ Phillips v. Buffalo General Hospital. 146 N.E. 200.

² 48 C.J. 1137-1138.

injuring the muscles and nerves of the leg and affecting the bone." The hospital was held liable for damages for not having used ordinary care in the selection of its servants.¹

Charitable hospitals which allow a nurse who has not had high school training to perform the duties of a trained nurse may be held liable for the negligence of the nurse.

If the nurse

"is lacking in educational preparation, if she is guilty of indiscretions that impair her physical or mental status, if she is lacking in that moral character which imbues the patient with confidence, then it cannot be said that she is a competent person to be placed in charge of a helpless patient." ²

In undertaking to put patient to bed after operation, physicians are liable for failure to see that the bed was safe, not containing harmful objects like hot water bottles, and cannot rely on plaintiff's special nurse to protect the patient.³

A nurse in a non-charitable hospital is looked upon as the servant of the hospital and the hospital becomes responsible for her acts. But she must always remember that besides her legal responsibility she has her own personal moral responsibility before God.

Once a nurse has taken a case she, like a physician,⁴ has a duty to follow the case to its natural termination. If she leaves, she must give a reasonable notice or provide a substitute. Sudden unwarranted abandonment of a case would render a nurse morally responsible for damages that might

¹ *St. Paul's Sanitarium v. Williamson*. 164 S.W. 36. There is a very excellent brief summary of the law in relation to hospitals: Harold M. Stephens. The legal responsibility of hospitals. Bull. of the Am. College of Surgeons, April 1st, 1925, 9, 35-46.

² *Norfolk Protestant Hospital v. Plunkett (Va.)*, 173 S.E. 363. Cited in the Journal of the American Medical Association, 1934, 103, p. 1404.

³ *Harber v. Gledhill*. 60 Utah 391, 208 Pac. 1111.

48 C.J. 1122.

⁴ Cf. *Infra*, p. 131.

be caused to the patient or the family by her infidelity. If the nurse possessed attachable goods, she could in all probability be held legally responsible for her negligence.¹

THE CONTRACT BETWEEN THE HOSPITAL AND THE PATIENT

Hospitals Conducted for Gain. We may consider the quasi-contract of a hospital conducted for gain as fairly well outlined by the Supreme Court of Appeals of West Virginia.²

“There can be no question about the liability of a hospital which is being conducted for private gain, and not for charitable purposes, for damages to its patients through the negligence or misconduct of its officers and employees. It is bound to exercise that degree of care towards the patients placed therein, measured by the capacity of such patients to look after and provide for their own safety. It is the duty of such hospital to employ only competent physicians and nurses, and to treat such patients with such skill and care as ordinarily obtains in the conduct of such institutions, and to protect its patients in such manner as their condition may render necessary, and such degree of care and diligence should be in proportion to the physical or mental ail-

¹ The following legal facts may be of interest to nurses:

The fact that a trained nurse cares for her own son does not preclude the son from entering charges for a trained nurse in suing for damages due to personal injuries. *Kimbal v. Northern Electric Co.* 113 Pac. 156, 159 Cal., p. 225.

In an action for injuries, plaintiff is entitled to recover the value of an untrained nurse, though such services were rendered by his wife. *Strand v. Grinnell Automobile Garage Co.* 113 N.W., p. 488, 136 Iowa, p. 68.

The same holds when services are rendered by members of the injured person's family. *Scorlock v. City of Boone.* 121 N.W., p. 369, 142 Iowa, p. 684. Also *Wells v. Minneapolis Baseball and Athletic Association.* 142 N.W., p. 706, 122 Minn., p. 327, 46 L.R.A. (N.S.), p. 606, Ann. Cas. 1914 D., p. 922.

² *Hogan v. Clarksburg Hospital Co.* 63 W. Va., pp. 84, 89, 59 S.E., p. 943.

ments of the patient rendering him unable to look after his own safety."

On the other hand the hospital is not bound to ward against calamities that could not reasonably be foreseen. The Springfield court of appeals (Missouri) ruled as follows:¹

"While all the authorities hold that a private hospital owes to its patients such reasonable care and attention for their safety as their known mental and physical condition reasonably requires, yet this is always limited by the unbending rule that no one is required to guard against or take measures to avert that which under the circumstances is not likely to happen, or, more accurately, which a reasonable person under the circumstances would not anticipate as likely to happen. The law only requires reasonable care—that care to avert danger which a reasonable man would take under the circumstances as they exist—and no man does or is required to take measures to avert a danger which the circumstances as known to him do not suggest as reasonably likely to happen. These circumstances include the patient's mental condition and aberrations, and what he is likely to do by reason thereof, the degree of his mental and physical helplessness, and the dangers which his surroundings afford."

The implied contract of a charitable hospital is usually in law somewhat different.

"Except in some jurisdictions, it is a rule that those who furnish hospital accommodations and medical attendance, not for the purpose of making profit thereby, but out of charity, or in the course of the administration of a charitable enterprise, are not liable for the negligent

¹ Davis v. Springfield Hospital. 218 S.W. 696. This decision cites a variety of cases of negligence which might or might not have been reasonably foreseen.

or other tortious acts of the physicians, nurses, attendants, or other persons in their employment or service, but only for their want of ordinary care in selecting them.”¹

This rule holds even for patients who pay for the services rendered them in a charitable hospital. Whether or not a hospital is a charitable institution is determined by the articles of incorporation and not by the fact that it takes or does not take pay-patients.

The implied contract, therefore, of a charitable hospital is to run a well-organized institution for the treatment of disease and to exercise ordinary care and prudence in the selection of its staff of physicians, nurses and attendants.

It seems that the reasons for the limitation of the responsibility of charitable hospitals are mainly two.²

(1) One who accepts charity waives his right to collect damages because of the negligence of his benefactor's servants.

(2) The physicians, nurses and attendants do not stand towards a charitable hospital in relation of servants to master. They are rather independent operators. The nurse is a servant of the physician, who directs her, rather than of the hospital. The charitable hospital has a duty to select good physicians and good nurses; but if they are unfaithful to their duty, that is their responsibility and not that of a charitable hospital.

A hospital also has duties towards its nurses. If the patient has a contagious disease and the nurse is not warned of the fact, the hospital conducted for gain is legally responsible if the nurse contracts the disease. In a charitable hospital it is the physician's duty to warn the nurse if she is working under him, and negligence in this matter would

¹ 11 C.J. 377.

² Cf. 11 C.J. 377.

probably render him personally liable for damages. If the nurse is given the duty by the hospital authorities, it becomes their obligation to warn the nurse if the patient has an infectious or contagious disease.

In one case, the plaintiff was a pupil nurse in the hospital under a contract by which she was to be trained for a nurse and receive ten dollars a month. She began her service there in January, 1902, when she was nineteen years old. In December, 1903, Mrs. Russell (the physician in charge of the patient and manager of the hospital) put her in charge of a patient, whose malady the state bacteriologist, after an examination of a culture taken from her, informed Mrs. Russell was diphtheria, a contagious disease. Mrs. Russell had doubts whether it was diphtheria. If it was, it was a very peculiar and unusual form of the disease. The plaintiff was not informed by anyone that it might be diphtheria, and was left in ignorance in regard to it until she developed the disease a few days after she was put in charge of the case. Under the declaration, the plaintiff claimed that she was entitled to a verdict against the hospital for its negligence in not notifying her that the case might be diphtheria, and against Mrs. Russell for her personal negligence in assigning her to the case, and for malpractice.

The court held that the fact that the hospital was incorporated as a charitable hospital did not exempt it from an action for damages by reason of its neglect to one of its employees; and that it was sufficient to state that the evidence

“tended to show that one of the patients whom the plaintiff nursed had a form of diphtheria, that a culture taken from this patient and examined by a bacteriologist contained diphtheria bacilli, and that Mrs. Russell, the physician in charge of the patient and manager of the hospital, was duly informed of the result of the examina-

tion. If the jury found these facts to be true, they were warranted in the conclusion that the hospital had notice of the contagious character of the patient's disease, and that it was its duty, acting as ordinarily prudent men would have acted under the same circumstances, to disclose the danger to the nurse, who was ignorant of its existence." ¹

THE CONTRACT BETWEEN THE PHYSICIAN AND THE PATIENT

The semi-contract between patient and physician was thus briefly outlined by the Supreme Court of Ohio.

1. A surgeon and physician, employed to treat a case professionally, is under an obligation which the law implies from the employment, to exercise the average skill, care, and diligence exercised by members of the same profession, practicing in the same or a similar locality, in the light of the present state of medical and surgical science; and that he will indemnify the patient against any injurious consequences which may result from his want of ordinary skill, care, and attention in the execution of his employment.

2. It is the duty of the physician and surgeon to exercise due and ordinary skill, care, and attention, not only in and about an operation which he decides to be necessary, but also, in the absence of a mutual understanding or notice to the contrary, to render such continued further care and treatment as the necessity of the case requires; and he is liable for injuries and damages which proximately result from the want of such ordinary skill, care, and attention. ²

¹ *Hewett v. Woman's Hospital Aid Ass'n.* 64 Atl. 190.

² *Gillette v. Tucker.* 65 N.E. 865.

Physician's Legal Obligation. Many a physician will be surprised at the idea that in accepting a person as a patient and treating him he assumes an obligation "to indemnify the patient against any injurious consequences which may result from his want of skill, care, and attention in the execution of his employment." But that is the legal state of the matter. Morally, one is bound to indemnify another for whatever injury he is morally responsible. An oversight or mistake is not a specifically human, that is, knowing and deliberate, act and one is not morally responsible for the injury he unintentionally causes. If a physician should knowingly and willingly do an injury to a patient he would be morally responsible to indemnify the patient even though the patient never went to court about the matter at all. If the injury is an oversight on the part of the physician and the patient goes to court about the matter and obtains a verdict allowing him pecuniary damages, it becomes a moral duty of the physician to pay the damages. He may insist on his legal rights and appeal the case, for his moral obligation to pay damages for an oversight depends on its being legally imposed. When, however, the damages are finally imposed, he is not only legally, but also morally, bound to pay.

The imposition of damages caused by lack of skill, care and attention on the part of the physician is a law made for the general welfare. Its purpose is to make physicians in general realize their high responsibility in dealing with the life and physical well-being of their patients. It is a good law and creates a moral obligation on the citizen to observe it.

Financial accountability for damages caused is of course general and applies not only to surgical cases but also to any type of case that a physician in any way undertakes to treat :

"The unwarranted abandonment of a case after its assumption will render a physician or surgeon liable in damages, at least where he does not give reasonable notice, or provide a competent physician in his place; and he is liable also for increased pain and suffering resulting therefrom."¹

The mere act of assuming care of a case imposes on the physician the obligation of due care.

"The fact that the services of the physician or surgeon were rendered gratuitously is no defense to an action based on failure to exercise reasonable care and skill."²

Responsibility in Using New Remedies. A physician may not experiment on a patient with new remedies unless he tells the patient beforehand and receives his permission, or that of his legal guardians. For his implied contract is to use ordinary skill in curing the patient and not to use the patient's illness as an opportunity for investigating the value of an untried method of treatment. But the mere fact that a method is newly introduced does not make it an experimental method. Physicians who receive samples of new drugs with a request to try them on their patients should remember that they do so at their own peril and if the patient suffers from the treatment they may be held liable for damages.

The following decision of the court of appeals (Missouri)³ sums up very well the physician's obligation as to methods of treatment: a practicing physician in the city of St. Louis advertised himself in the newspapers as a specialist in the treatment of hernia. A workman who did a great deal of

¹ 48 C.J. 1129.

² 48 C.J. 1139.

³ *McClarin v. Grenzfelder*. 126 S.W. 817.

lifting called on him for treatment. He claimed he could cure him in thirty minutes without causing him to lose time from work. The man returned for treatment and the physician injected into the right groin over the hernia some sterile paraffin and pronounced it cured because the impulse of the bowel could not then be felt in the usual coughing test. The patient had a good deal of pain from that time on for four months, when he was found to be suffering from peritonitis. At operation no paraffin was found *within* the peritoneum, but "it was in a position where inflammation might have occurred from contact of the paraffin with the peritoneum."

The physician maintained his method had been used in Chicago, Cincinnati and Vienna where it had been developed.

In discussing the case the court said:

"If expert practitioners of the defendant's school concurred in opinion about the right method of treating hernia, and defendant adopted a method not recognized as sound, then, according to courts which have passed on the question, his conduct should be regarded as an experiment which renders him liable if it injured the plaintiff in the way alleged; that is, caused peritonitis.¹

. . . But if defendant's system of treatment was recognized as proper, then, though there were other systems recognized as proper, he cannot be convicted of negligence if he made use of the one he deemed most suitable for plaintiff's case. *Wells v. Medical Ass'n.*, 9 N. Y. St. Rep. 452."

Negligent and Unskillful Treatment. A physician who, in driving his automobile, injures another and then takes him to the hospital and treats him in a negligent manner is

¹ The court here cites a number of decisions on this point.

guilty of two wrongs and may be held liable on two separate counts.

"The chauffeur who carelessly runs his automobile upon another, inflicting a wound into which a metal garter buckle is driven, is guilty of a wrong independent of the wrong done by himself in the capacity of a surgeon in connection with another surgeon in carelessly, unskillfully and ignorantly sewing the garter buckle into the wound, and thereby inducing infection and gangrene, which in turn works permanent disability to the injured party."¹

Likewise a person who is injured by the carelessness of his employer and then unskillfully treated by his employer's physician may recover damages from the employer and also from the physician.²

THE CONTRACT BETWEEN THE LAWYER AND THE CLIENT

The lawyer's general duty and his implied contract may be stated in the following summary of the *Corpus Juris*:

"It is the duty of an attorney to bring to the conduct of his client's business the ordinary legal knowledge and skill common to members of the legal profession; to act towards his client with the most scrupulous good faith and fidelity; and to exercise, in the course of his employment, that reasonable care and diligence which is usually exercised by lawyers. He is not bound to possess or exercise the highest degree of skill, care, and diligence; nor is he an insurer or guarantor of the results of his work. For the consequences of failure

¹ 29 A.L.R. 1312.

² 29 A.L.R. 1310.

to perform these duties an attorney is generally liable to his client.”¹

Moral Right of Defense. Lawyers are often concerned with the fundamental requisite in a contract that it be an agreement to do that which can be done morally and legally. If the client's case is morally unsound, a lawyer has no moral right to undertake its defense.

Suppose, for instance, a client requests his lawyer to enter suit to obtain possession of a piece of property. In going over the matter he sees clearly that those now in possession are the true owners and his client has no title. Still because of certain evidence that could be suppressed he could win the suit for his client.

It is perfectly clear from the moral point of view that he cannot accept the case. Should he accept and win the client's case he would be personally bound to right matters or pay damages to the parties he deprived of their property.

Canon 30 of the American Bar Association's Canons of Professional Ethics reads as follows:

“The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and, having accepted a retainer, it becomes his duty to insist upon the judgment of the Court as to the legal merits of his client's claim. His appearance in Court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.”²

¹6 C.J. 682. Edited by William Mack and William Benjamin Hale. New York: 1916.

² Report of the Fifty-sixth Annual Meeting of the American Bar Association. Baltimore: 1933. P. 705.

Not all cases are clear when they are presented at the outset to the lawyer. He cannot be bound in conscience to constitute himself judge and jury and impanel the witnesses before undertaking a case. When he sees that his client has a case he can undertake to marshal and present the evidence, but he cannot attempt to suppress the true or demonstrate the false.

“It is the duty of an attorney to bring to the conduct of his client’s business the ordinary legal knowledge and skill common to members of the legal profession; to act towards the client with the most scrupulous good faith and fidelity; and to exercise in the course of his employment that reasonable care and diligence which is usually exercised by lawyers.” (6 C.J. 682.)

If the client’s case is morally unsound the lawyer has no moral right to undertake its defense.

A lawyer cannot, with a clear conscience, attempt to demonstrate the false or suppress the true when such suppression will cause injustice to another.

INJURY TO PROPERTY AND INDEMNITY

In the ordinary exercise of one’s duty or in the lawful pursuit of pleasure it often happens that one does another an injury which may be more or less serious.

The questions arise:

(a) to what extent is one guilty of the injury he did to another?

(b) to what extent is he bound to repair the injury done?

The first question derives its answer from the concept of responsibility and guilt. One is fully responsible only for truly human acts, that is to say, acts which are done deliberately with full knowledge of what is being done. One

becomes morally responsible for the consequences of his action only when these consequences are also envisaged, at the time the action is done, as consequences which may reasonably be expected to follow once the act has been committed.

If one does not see clearly that such and such effects should be considered when he performs a given action, he is not responsible for them with full moral responsibility.

If one commits an act or follows some course of action and clearly sees that grave damage may be caused to another human being or to a group of individuals, and this grave damage does follow, then he is not only guilty of the injury done but is also bound to repair it to the best of his ability. Whether the individual or group of individuals bring suit for damage and win, or bring no suit, or having sued lose the suit, one who is responsible with full moral responsibility for the injury done is bound to repair the damage he has caused if it is within his power.

But let us suppose that the one who does the injury did not envisage it as a possibility, or did so only vaguely; he cannot be looked upon as morally responsible for his action and cannot be held in the forum of his own conscience to make good the injury he has caused independent of any legal proceedings.

But suppose that legal proceedings are instituted and the injured party wins his suit in a court of law, then the one who did the damage is not only legally bound to pay the damages but also obligated in conscience to do so.

“For such a judgment is just if indeed it applies laws which are useful and really necessary for the general and public security.”¹

¹ E. Génicot. *Theologiae Moralis Institutiones*. Louvain: 1896. I, p. 530, § 508. Génicot has a very clear discussion of this whole field.

FUNDAMENTAL PRINCIPLES CONCERNING CONTRACTS

1. A contract is an agreement which creates an obligation.
2. No agreement can create an obligation to do that which is morally wrong.
3. A contract may be binding in conscience when it is not legally enforceable, and vice versa.
4. Those who are mentally incapable of understanding what they are doing cannot enter into an agreement which creates an obligation as long as they are mentally incapable.
5. In order that a contract may be made, the contracting parties must intend to assume a mutual obligation and give expression to their intentions.
6. Quasi-contracts binding in conscience are made *ipso facto* in virtue of an implied agreement by undertaking certain duties and functions.
7. A nurse's implied contract means that she will watch the patient so that no harm comes to him and also give such care as will conduce to his comfort and hasten his recovery.
8. Once a nurse has taken over a case she must follow it to its natural termination or give ample notice that she must abandon the case or provide a worthy substitute.
9. A hospital conducted for private gain is legally responsible for damage to patients arising from the negligence or misconduct of its physicians, nurses, attendants, and all other employees.
10. A hospital conducted for private gain is not responsible either morally or legally for accidents to patients which could not have been avoided by ordinary care and prudence.
11. The implied contract of a charitable hospital binds it to exercise ordinary care and prudence in the selection of the medical staff, nurses, and attendants, but such a hospital is

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not legally responsible for the negligence and misconduct of members of the staff, or any of the nurses and attendants.

12. A non-charitable hospital has a moral and legal responsibility to let nurses know that their patient is suffering from a contagious disease.

13. In a charitable hospital this duty falls upon the physician if the nurse is working under him, and on the hospital if she is given the duty of caring for the patient by the hospital authorities.

14. A physician is obliged to have and to use ordinary skill and prudence in the diagnosis and treatment of the disorders of his patients; and his quasi-contract obliges him legally to indemnify the patient for damage caused by his want of such skill or negligence in using the ability he possesses.

15. A physician is not morally bound to indemnify a patient for his oversight or accidental errors but becomes morally bound to pay damages only when they are legally imposed.

16. The physician is bound morally and legally not to abandon a case he has commenced to treat.

17. Gratuities of service is no excuse for negligence.

18. A physician may not experiment on methods of treatment without the patient's consent; that is, all methods of treatment must have been given fair trial and soundly established in the literature before they can be tried on the patient without his consent or that of his guardians, unless the physician knows that they are at least harmless.

PROBLEMS FOR DISCUSSION

Discuss the following problems in the light of the above principles:

1. Is it the duty of the physician to inform the nurse on the hall that his patient has a venereal disease? I believe that

it is though I have not met with a doctor who performs this duty. I take precautions with all of my patients, always bearing the possibility in mind, but I think this should be more than an ethical problem.

2. A nurse has just nursed a case of scarlet fever and is asked to assist with an O.B. case. Doctor states he will assume responsibility. What should be her action in this respect?

3. A married woman about forty years of age went to a sanitarium to receive treatment for epilepsy. "She had been subject to epileptic seizures for a period of fifteen years, but up to this time she had been able to perform her household duties and had borne four children, three since she first exhibited symptoms of epilepsy." The physician in charge of the sanitarium "made an examination and found that the uterus was contracted and lacerated, and that the lower portion of the rectum was diseased. On May 13, 1896, he operated for these difficulties. Thereafter she remained in the sanitarium several weeks without improvement and returned home." The physician said in regard to the operation: "I worked her deliberately and systematically, taking chances which she did not realize the full aspect of, deliberately and calmly deceiving the woman." The woman then returned for a second operation. Without letting the woman or husband know just what he was about to do, the physician removed uterus and ovaries. Previous to the operations she had been perfectly normal mentally, except for a few hours following her epileptic seizures. After the second operation she suffered a mental deterioration and some two years subsequently was adjudged insane and sent to a state asylum. Her husband sued the physician for removing the uterus and ovaries without authorization and obtained a judgment for three thousand dollars. The physician appealed the case.

Discuss the moral problem of a physician's responsibility for performing a grave surgical operation, mutilating the patient, under the circumstances as above mentioned.

4. A man came to a private non-charitable hospital to get treatment for his rheumatism. He was wrapped in cotton

and bandages. Turning in bed, he set fire to a match and was severely burned. No one knew just how the match got into the bed. He sued the hospital for damages. Was he entitled to recovery?

5. "When Wetzel was ill with typhoid, he became a patient, occupying a room on the third floor of the hospital. In absence of a nurse or other attendant, he opened a window and jumped out, falling to the pavement. From resulting injuries death ensued." . . . The hospital "denied negligence and pleaded that Wetzel became a patient under contract to give him general care only and that he received such care. The answer also contains a denial that defendant undertook or promised to furnish Wetzel with all the care, nursing, attention, control, oversight, and medical treatment necessary, suitable, or appropriate to his condition. The jury rendered a verdict in favor of plaintiff for \$5,500. From a judgment of that sum defendant appealed."

The court ruled that the hospital, being incorporated for private gain, was responsible for the torts of a servant in the scope of his employment. "A patient is generally admitted to a hospital, conducted for private gain, under an implied obligation that he shall receive such reasonable care and attention for his safety as his mental and physical condition, if known, may require. . . . Nurses necessarily have charge of delirious patients during the absence of physicians, while the responsibility of the hospital continues. In the present case the nurse knew that the patient was in danger from delirium. . . . The patient was left near a movable, unfastened, unprotected window sash in a room three stories above the pavement. He in fact committed an irrational act resulting in his death. It cannot be said as a matter of law that there was no proof of negligence on her part or on the part of her employer. A nurse's absence of five minutes may amount to negligence. *Croupp v. Garfield Park Sanitarium*. 147 Ill. App. 7."

The judgment of the lower court was affirmed.¹

¹ Cf. *Wetzel v. Omaha Maternity and General Hospital Ass'n*. 148 N.W. 582-586.

Discuss the moral responsibility of the nurse

- (a) in case she was placed on floor duty with various rooms and patients to attend to and that the hospital gave her no assistance in spite of the fact that she pointed out the delirious condition of the patient.
- (b) in case she was told not to leave the ward where the delirious patient was in bed and to keep a careful watch over his actions, and, with full insight into the danger of what she was doing, she left the patient unattended.

6. A special nurse is on night duty with a delirious patient, who repeatedly throughout the night makes an effort to get to the window. In the morning someone knocks at the door and the nurse goes to the door to answer, leaving the patient between herself and the window. No sooner is the nurse at the door than the patient rushes to the window and throws it open. The nurse arrives in time to seize the patient's gown which tears, leaving the shreds in the nurse's hand as the patient falls.

What is the moral responsibility of the nurse? Where should a nurse remain relative to a patient and the window when a patient is attempting suicide by jumping out of the window?

7. A man worked in a mill upon a spinning jack. It was necessary to keep the spinning jack running in order that a number of looms might continue to operate. The man's wages were one dollar and a half per day and he had agreed not to quit work without giving fourteen days' notice.

The employee quit work without giving any notice at all. As a result the spinning jack was idle for three days and a number of looms had to cease operating.

The employee returned asking for his unpaid wages. The employer maintained that by breaking his contract and leaving without notice he had caused far more damage than the amount due in wages.

At the trial the minimum estimate of the employer's loss

was one hundred dollars, which was more than half the amount demanded for unpaid wages.

Has the employer the right to hold that the debt claimed for wages is obliterated by the injury he sustained when the employee broke his contract?¹

8. The Atlantic Coast Line Railway Company established a hospital in North Carolina for its employees only. The employees pay a regular monthly sum towards the maintenance of this hospital. The court looked upon this hospital as "a charity whose noble purposes are untainted by selfish interest."

One of the employees of the railroad company "was taken sick and was received into the hospital of the relief department . . . to be there operated on and attended to." He complained "that the operation was performed, and through the neglect and inattention and carelessness of the surgeon, nurses, and attendants, he was permanently injured, and demanded damage for his suffering and injury." He did not allege any want of skill of the surgeon who was selected by the hospital as a member of its staff, but solely malpractice on the part of the surgeon and his attendants.²

Is the employee entitled to receive such damages from the railway company?

9. A woman went to a surgeon to be treated for the fracture of a rib which she claimed was due to the negligence of a railway company. An x-ray failed to show any fracture. The surgeon then arranged for an x-ray diagnosis by another specialist. She told the second x-ray specialist that her employer had spoken to her about the danger of x-rays. The specialist assured her that in a thousand or more exposures he had never seen anyone injured. During the fourth exposure she claimed to have experienced a sense of faintness and that some four or five hours later the back and portion of her body exposed to the x-rays became red and irritated. About two weeks later she noticed a definite burn and a developing injury which did not heal and rendered her incapable of work.

¹ Cf. *Satchwell v. Williams*, 40 Conn. 371.

² *Barden v. Atlantic Coast Line Ry. Co.* 67 S.E. 971.

In the trial the specialist produced evidence of his skill and that his x-ray machine was an excellent one and in good order, confirming all by the testimony of qualified experts who bore witness to the fact that the treatment given "was as safe as exposures to the x-ray apparatus could be made" and that "it was not possible in the use of the x-ray apparatus to guard absolutely against resultant burn."¹

Assuming the facts as stated, had the specialist any moral obligation to pay or legal liability for damages as far as you can judge from the above discussion?

10. This evening on relief I was very tired and just didn't feel like working. When it came time to give out cathartics, I went to the diet kitchen, took out the bottle of milk of magnesia from the ice box and poured out what I thought was an ounce, thinking to myself, Well, what's the use of going way out to the chart room for a medicine glass when I know it is about an ounce. Then I figured that I could measure with the tablespoon which was right there in front of me but deliberately avoided measuring the magnesia. After I gave out the medicine I could easily see where I was wrong, not only the deed alone but the weakening of my own character.

11. I don't think some of the orders for narcotics which I give at night are all signed for by the doctors in the day time but I have neglected checking up on them because it is a lot of bother; but I know it is wrong not to have them signed although the supervisors on the floors have all said they would attend to those orders, but I think they do not.

12. This evening the Seniors initiated us and while we appreciated the cleverness of the jokes, some of them were carried a little too far. In the first place our faces were smeared with mercurochrome. This wasn't so bad in itself but they dropped some of it on our clothes and we couldn't get it out. This wouldn't have been so bad had they not told us beforehand that they wouldn't spoil our dresses, and one of the girls had a brand new dress spotted and there wasn't a thing to do about it.

¹ Sweeny v. Erving. Ann. Cas. 1914 D. 905.

CHAPTER 13

MASTER AND SERVANT: PHYSICIAN AND NURSE

The Family and Its Domestics. When we come to consider the relation between master and servant we should distinguish at the outset between those who live under the same roof with the master and those who do not.

Those who live under the same roof with the master may be termed domestics.¹ Furthermore the term family is said to refer "in its ordinary and primary sense" to all those living under the same roof, parents, children, all other relatives, as well as domestics living together under one head.²

Domestics are thus assimilated to the family; the head of the family has a peculiar and special obligation not only of justice but also in virtue of special bonds of charity to care for all the members of his household who depend upon him because they live under the same roof, share a common lot and derive their support from him. The head of the house has a duty to see to it that the children are properly housed, clothed, fed and educated. He certainly has the same duty to domestics as far as food, clothing and shelter are concerned. He must also take care of their morals. He must give them proper opportunity for the exercise of their religion and even see to it that they do not neglect this duty.

¹ In John Bouvier's Law Dictionary (Revised by Francis Rawle. Boston: 1897. Vol. I, p. 600) we read under the caption *Domestics*: "Those who reside in the same house with the master they serve. The term does not extend to workmen or laborers employed out of doors. 5 Binn. 167; 6 La. Ann. 276; 43 Tex. 456; Merlin, *Répect.* The Act of Congress of April 30, 1790, S. 25 used the word domestic in this sense."

² 25 C.J. 664.

Young domestics who might be given further education at night school or in other ways without interference with their duties should be given such opportunities and urged to avail themselves of them. In other words, a domestic is a part of the family and should be treated with something of the paternal care that is exercised over a son or daughter.

Negligence on the Part of the Head of the Household.

Neglect of proper care in the treatment even of workmen who merely eat at the house renders the master of the household responsible for any damages that may ensue.

“A son living with his father and mother on his father’s farm was carrying on the farming operations. He arranged with his parents to board his hands. The plaintiff was employed by him as a laborer for stipulated wages and board. The father purchased, and the mother cooked and served, meat which, when put upon the table, was tainted and unwholesome. The evidence tended to show that the bad condition was apparent while the meat was cooking. The plaintiff became sick by partaking of it. Neither the father nor the son knew that the meat was tainted until it was on the table. It is *held* that the son is liable for negligence in providing unwholesome food, and that the father and mother, having jointly undertaken to provide the board, are equally liable for negligently cooking and serving it.”¹

The Domestic’s Duty of Charity. It is also true that a domestic has duties of charity towards the head of the house and should no more sue a good master for a misfortune of this kind than a son would sue his father who had treated him unjustly.

On the other hand, it is the neglect by the *nouveaux riches*

¹ *Malone v. Jones et al.* 139 Pac. 387.

of modern times of the due fatherly and motherly care of domestics which has led to the acute servant problem of our day. If the father of the family is all he should be, the position of servant in his house would be something to be coveted and would not lightly be thrown aside by any sensible person in his employ.

Employees. Those whom one employs, but with whom one does not live, have a right to just treatment, but they can claim only the ordinary charity that man owes to his fellow men and not that which derives from the family relationship.

The relation between employer and employee is determined by the express or implied contract arising out of the preliminary agreement between them. Prior to allowing a servant to commence his service, the employer should make known to him in perfectly clear terms just what he is expected to do. In many cases it would be well to have this in writing. But once the service has been begun it would be an infringement of justice to *demand* anything more of an employee than what was originally stipulated.

Care of Injured or Sick Employees. If an employee becomes suddenly ill, or is injured in the service of his employer, it is clearly a duty of the employer to do for him at least what he would do for one not in his employ, that is, administer first aid and call for a doctor or surgeon or provide immediate transportation to a hospital. It seems that in earlier times the employer was bound to provide injured or sick employees the necessary medical and surgical attendance. But it seems to be the general ruling now that a contract of employment does not imply *ipso facto* a contract to provide medical and surgical care.¹ Nevertheless, the more recent trends in industrial medicine are leading us back

¹ 18 R.C.L. 506.

to the older concept. It is after all the charitable view which may well be taken by large and wealthy corporations.

Duties of Servants. The servant is bound to do what he has undertaken to do and the master is bound to pay the wage he promised. The hours of service are determined by the contract or agreement between them, or by legal statutes, or by the ordinary rules and regulations of the place in which the employment is undertaken.

Naturally the servant is bound to present himself in fit condition for work. Intoxication evidently unfits the servant for work and is ordinarily a legal ground for discharge.¹ There are, however, less evident types of incapacitation which in some conditions might have serious consequences. One who must be keenly alive to all that is going on, as a busy switchman, would be grievously delinquent in duty if he took such an inadequate amount of sleep that he could not keep awake when on duty. No one might observe the condition, but that would not take away the interior moral responsibility, for the serious consequences which might result from going to sleep while on duty because one had without reason deprived himself of the adequate amount of rest.

An employee has a duty to carry out the instructions of his master precisely because he has agreed to do so. This supposes, of course, that the instructions are not morally wrong, for no one can oblige himself to do what is morally wrong. If he is an agent he cannot go beyond his delegated authority.

The Nurse as an Employee. A nurse is an employee either of the hospital, the physician, the patient, or the family or guardian of the patient.

If a nurse is employed by a private hospital operating for gain she is a servant of the hospital and as such the hospital is responsible for her acts.²

¹ 18 R.C.L. 519.

² Cf. C.J. 11, 377.

If a nurse is employed in a charitable hospital not operated for profit, what she does she does on her own responsibility or she is acting under the orders of a physician and the physician is responsible for her acts.

In general a nurse acts under the orders of a physician. She is either employed by the physician to carry out his orders, or by the hospital or the family or someone else to carry out the orders of the physician in charge of the case. In accepting the position she contracts explicitly or implicitly to carry out the orders of the physician. She has no right to change his orders nor to make any substitutions which she might think more efficacious. Any disobedience to the orders of the physician is not merely a matter of professional etiquette but the violation of a contract. In general she cannot say, when a patient is seriously ill, what might be the results of her disobedience to orders and in a case of serious illness certain violations of orders might amount to a grave sin.

In the unlikely case that the physician is evidently practicing euthanasia and is going to kill the patient, let us say, by a very large dose or increasing amounts of morphine, she must decline to carry out the orders and give up the case.

If her own experience is such that she knows that the physician in charge is mishandling the case she must either continue to carry out his orders or give up the case. She should in general be very careful about giving expression to her reasons for relinquishing the case, for she must remember that she is no physician, that reputable physicians differ very much in their modes of treatment and that she might seriously injure the physician's reputation by accusations of malpractice which she is not qualified to make.

In minor illnesses she should hold her peace and carry out her orders no matter what she thinks. She should remember that she has no duty to enlighten the public on the rela-

tive merits of physicians and the value of their treatments.

When asked her opinion about a physician she should say frankly that it is contrary to the ethics of the nursing profession to pass judgment on physicians.

Furthermore she should remember that she has a duty of charity as a faithful servant to a master to protect the good name and reputation of the physician under whom she is working.

Nevertheless, a trained nurse is supposed to use discretion in emergencies and because she is a trained nurse more is left to her judgment than to that of a so-called practical or untrained nurse. She may know, for example, that a physician intended a certain treatment to be discontinued, and if he cannot be reached by telephone she may take it upon herself to decide. The more familiar she is with the physician and his mode of dealing with patients the wider is her sphere of judgment, but she must be reasonable even in emergencies and never usurp the definite functions of the physician and surgeon.

An intern is not a servant but a student and has a good deal to learn from a trained nurse as well as from the physicians of a hospital. When working with a physician in the hospital he is a person in subordinate authority and as such has the duty to carry out orders and not to institute measures of his own. His position is very similar to that of the nurse, but because of his doctorate in medicine and the training that it implies he has a wider sphere of discretion in emergencies. But he must honestly endeavor to carry out the treatment of the case as the physician in charge wants it carried out. He has no right to substitute measures of his own because he thinks they are superior.

Because the intern is a student and learns from the physicians of the hospital, and also to some extent from observing the way in which various treatments are carried out

by nurses with special training, he has a special duty of respect to his teachers and is bound to all by the common law of charity.

PRINCIPLES

1. Servants living under the same roof with the master are domestics and, unlike ordinary servants or employees, have special duties of charity over and above obligations of justice to their masters.

2. Masters in like manner have special duties of charity towards their domestics which are of a higher character and more extensive than the duties of charity that one man owes to another man or a master owes to an extern employee.

3. The relation between an employer and an extern employee is strictly one of justice only, but the best interests of all would be conserved if employers extended to all employees the special services that charity so readily offers.

4. Besides contracting to do a certain kind of work, the employee implicitly contracts to do it well and must therefore present himself for work in fit condition to live up to his contract.

5. An employee is bound to carry out all the instructions of his employer in regard to the work he has agreed to perform unless these instructions should entail something morally wrong.

6. If a nurse is employed by a private hospital, operating for gain, she is a servant of the hospital and as such the hospital is responsible for her acts.

7. If a nurse is employed in a charitable hospital, not operated for profit, what she does she does on her own responsibility, or she is acting under the orders of a physician and the physician is responsible for her acts.

8. Because a nurse acts as one in subordinate authority she has no right to change orders or make any substitutions which she might think more efficacious.

9. An intern has the obligation to the physicians of a hospital of one in subordinate authority to his superior, the special duty of charity of a student to his master to all those from whom he learns, and the general obligations of charity to all with whom he comes in contact.

PROBLEMS FOR DISCUSSION

Discuss the moral problems involved in the following incidents:

1. When a doctor orders a treatment, even though it is almost impossible for you to carry it out and the head nurse tells you not to, what should you do?

2. Giving the doctor catgut and letting him think it is No. 2 by order of the supervisor.

3. Found a child with impetigo who has been treated by family physician for two weeks. Parents say infection is spreading. For the patient's sake, why can't a nurse tell parents that a 2% ammoniated mercury is better than zinc oxide which was the physician's prescription?

4. When a patient is not improving as rapidly as might be expected, the question is often asked of the nurse, whether it would be advisable to change physicians. This is rather a delicate subject and one she is often confronted with.

5. A patient asks the nurse if a certain doctor is good or not and if she would recommend him. Is it ethical to tell the patient your opinion of the doctor?

6. I slept on duty. We have a relief supervisor on. She said she didn't mind as long as we did our work. And, Boy, I took advantage. She is a swell scout and I love her. Why can't everyone be like that?

7. A senior nurse prepared a medication and gave it to a young student to take to a patient. She made a mistake in the name with the result that it was given to the wrong patient. No harm resulted, but shouldn't that senior nurse have reported to her superintendent of nurses her mistake?

8. Nurse found sleeping soundly in a room where her patient was in a critical condition as a cardiac. Happens night after night. Should I have reported this, or kept an eye on the patient myself, as supervisor?

9. Supervisors—What a position at times. A well-known obstetrician always gives atropine sulph. gr. $\frac{1}{150}$ before he does a Caesarean section—say, a half hour previous to the operation. From observation we have found that the babies cry very soon after birth and respond to treatment immediately. Another doctor (B), very clever, orders with above medication morphine sulph. gr. $\frac{1}{4}$ and we do have a time resuscitating Dr. B's babies. Dr. B orders morphine gr. $\frac{1}{4}$ —I give morphine gr. $\frac{1}{8}$. It is a problem—but I feel justified in doing it—again am I right or wrong?

10. One of the doctors becomes very impatient when called at night concerning a medication, etc. Should the supervisor be permitted to order a standard medication or treatment of the doctor's, knowing that the doctor would not mind not being called?

11. The doctors were busy in the operating room. A very sick patient was restless and every attempt to make her comfortable failed. Would a nurse have done her duty if she gave the patient a sedative without an order?

12. May a nurse discontinue giving a medication to a patient, thinking that the doctor probably forgot to do so?

13. Are we allowed to give a narcotic to a patient who is very sick which might tend to shorten his life?

14. Giving a drug other than the doctor prescribed at the order of the supervisor.

CHAPTER 14

COÖPERATION IN THE SIN OF ANOTHER

Concept of Coöperation. One may offend against law by his own independent act and also by acting in conjunction with another person. This action in conjunction with another person is termed coöperation.

There are two very different ways in which one may co-operate in the sin of another :

(a) when one intentionally takes part in a sin or when one advises, commands or persuades another to commit a sin, explains or in some manner shows an ignorant person how to commit a wrong act, praises him and approves his conduct or gives him help while he is committing the immoral act. This is termed *formal coöperation* and is always unlawful and immoral.

(b) when one does something with no intention whatsoever to help another commit sin; something one has every right to do, something perfectly innocent and good in itself but which one person, without the other desiring it in any way whatsoever, perverts to a wrong end. This is termed *material coöperation*.

For example, a man, who makes a living by selling sporting goods and fishing and hunting supplies, sells a revolver to a customer who without any more ado uses it for murder or suicide. Selling the revolver was an act of coöperation in

the subsequent murder or suicide, but it was not intended to be such and, therefore, is not a sin.

A physician asks the nurse for a hypodermic syringe, and then uses it to kill a patient by giving an overdose of morphine. She coöperated in his act; but she did not know he was going to kill the patient; she had no such intention herself and therefore her coöperation was not formal and intentional but material and unintentional.

When one knows that his action will be abused he should in general desist. But when refusal to give material coöperation will mean a grave damage to oneself, one may not always be bound to desist from doing what in itself is innocent and good in order to prevent the abuse of one's action by another. This is particularly so when desistance will be futile anyhow and one will be unable to prevent the sinful action of another. One can never sell, lend, or produce an object which is essentially designed for an evil act. To do so might be termed formal coöperation in the sin of another. He who distributed or produced such articles would not use them himself for sinful purposes, but since they could be used only for sinful purposes, he would have a sinful intention in producing or selling them and would, therefore, sin. A douche may be used and ordinarily is used for legitimate hygienic purposes. One who produces or sells douches commits no sin. If others abuse what may legitimately be used, neither the producer nor the distributor can be blamed. But when one produces, sells or buys for others articles whose only use is contraception,¹ he knowingly and willingly coöperates in the sin of another, and, therefore, sins because he has a sinful intention.

Coöperation in Immoral Operations. The most serious problems of coöperation in the life of a nurse are those which concern illegitimate and immoral operations. Such

¹ See page 216 for a discussion of the morality of contraception.

operations are particularly those which concern the life of the unborn child. When these operations are illegitimate they are equivalent to murder. The surgeon, the assistant surgeon and the nurse constitute a team that coöperates to take the life of a human person. If the nurse knows ahead of time the character of the operation, that it is an illegitimate attempt to take human life, she cannot enter upon the operation. Her coöperation would be formal, for she knowingly helps while the immoral act is being committed and therefore formally coöperates in what is being done. Her proper course of action is therefore to explain to those in charge that on account of her moral principles they will have to assign someone else to that operation. If she does this quietly and respectfully, most supervisors or surgeons will arrange other duties. Occasionally she will be rudely given the alternative of sacrificing her principles or her position. In these circumstances she must be faithful to her ideals and take the consequences.¹

Should, however, an operation be started and in the midst of it the nurse realize that an unlawful operation is being attempted, it would not be right for the nurse to drop everything and leave the operating room. To do so might cost the life of the patient. The nurse might well inform the surgeon that she would never have entered on the operation had she known its character, and that she is seeing it through merely because she does not want to do anything to endanger the life of the patient. Her further coöperation has a good end and her coöperation in the immoral end of the operation is material only. This was an actual problem in the following instance and is probably encountered from time to time.

“About the fifth month of pregnancy a mother-to-be says she absolutely does not want her baby. A physician

¹ For another opinion see Woywood. *Homiletic Monthly*, August 1920, XX, No. 11.

is called and he decides to do an abortion. A nurse is called on the case and does not know it will be an abortion. She cannot back out once she has entered, because it will be life or death. The physician is holding her life for this abortion, and she absolutely cannot escape its fangs. What should she do?"

Mutilating operations are also illegitimate without some adequate reason such as the removal of a diseased organ to save the patient's life. Neither a man nor the state has any right of supreme dominion over the life or body of a human being. The state may punish crime but the life of an innocent human being cannot lawfully be taken, nor his body mutilated by state authority.¹ Much less has an individual a right to mutilate his own body, or a surgeon a right to carry out the mutilation at the patient's request. The surgeon has no right over the patient's body and the patient cannot give him a right he himself does not possess.

If a nurse knows what she is going into, she cannot assist at a mutilating operation.

A nurse asked the following question: "Do you think a doctor is justified in removing tubes in a patient who has had a kidney removed?"

The answer of course is: Not unless the tubes are diseased. If a nurse goes into an operation, posted as a nephrectomy, and the surgeon goes on to a salpingectomy, it is not the nurse's business to ask any questions. The matter rests with the conscience of the surgeon. He and not the nurse is to judge whether or not the tubes are diseased; and once a nurse has entered on an operation she cannot suddenly leave and endanger the life of the patient, because she perceives that the surgeon is proceeding to something which she regards as immoral.

¹ Cf. p. 250.

Many situations arise in which a nurse must make up her mind as to whether or not she can enter upon an operation. An operation directed against the life of the unborn child is a murder and a nurse has no more right to coöperate in such an operation than a woman has to go out with a gunman and hand him the gun while he does the shooting.

On this account we are dealing in some detail in the next chapter with the morality of certain operations.

PRINCIPLES

1. When one *intentionally* takes part in the wrong act of another by advice, persuasion, or help of any kind he is said to coöperate *formally*. *Formal* coöperation is always immoral.

2. When one does something with no intention whatever to help another to commit sin, something good and innocent in itself which one has every right to do, and another perverts the action to a wrong end, one *unintentionally* helps another to do a wrong act and is said to coöperate *materially*.

3. When one knows his action will be abused he should in general desist.

4. Where refusal to give material coöperation will mean a grave damage to oneself, one may not always be bound to desist from doing what in itself is good and innocent in order to prevent the abuse of one's action by another.

5. One can never sell, or lend, or produce an object which is essentially designed for an evil act.

6. In an operation designed to take the life of an unborn child, the surgeon, the assistant surgeon, and the nurse constitute a team which coöperates to take the life of a human person.

7. If a nurse knows ahead of time that the operation in which she is called upon to assist is an illegitimate attempt to take human life, she must not enter upon the operation.

8. If an operation is started and in the midst of it the nurse realizes that an unlawful operation is being attempted, it would not be right for her to drop everything and leave the operating room, for such a course of action might endanger the life of the patient. Her further assistance is for the well-being of the patient and her coöperation is material rather than formal.

9. Mutilating operations are illegitimate without some adequate reason, such as the removal of a diseased organ to save the patient's life.

10. If a nurse knows what she is going into she cannot assist at an illegitimate mutilating operation.

11. In the midst of an operation the surgeon and not the nurse decides what is to be done and whether or not an organ is diseased and should be removed.

CHAPTER 15

MORALITY OF CERTAIN OPERATIONS

A. PREMATURE DELIVERY AND DIRECT ABORTION

The unborn child is fundamentally and essentially a human person and as such has the rights of a person even though he is utterly incapable of asserting and defending his rights.¹ Why do we say that the unborn child is a human person? From the first moment of its fertilization the ovum commences an orderly process of growth and development which reaches its physical limits in the early adult years of the human being. One after another functions and powers unfold themselves as the physical basis of their manifestation is laid. In all the various processes of transformation and development the organism manifests a fundamental unity, so that this embryo becomes this adult human being by the organizing activity of one and the same living principle which determines growth and development in the embryo, and manifests intelligence and the power to control conduct in the adult. An intelligent individual is a person by reason of his fundamental capability of intelligence. He does not cease to be a person because he is asleep and manifests no intelligent behavior, nor can he be denied the rights of a person when he is knocked unconscious or even when he be-

¹ The personality of the fetus is taken for granted in canon law. An aborted fetus, at whatever stage of development it may be, is to be baptized, absolutely if it is certainly alive, conditionally if there is doubt as to its life (Can. 747). At the same time the canon law states: The subject capable of baptism is every live man and only a live man who is not yet baptized (Can. 745, § i). But a living man is a person and the fetus must therefore be a person from the point of view of canon law. Furthermore, "By baptism a man is made a *person in the church of Christ* with all the rights and duties of Christians" (Can. 87). But naturally the duties do not bind as long as a person is "*non sui compos*"* (Can. 88, § iii).

comes insane through old age or physical illness. As long as the organism that is fundamentally capable of intelligence, lives, it is a person and has the inalienable rights of a person. If the human embryo is alive, and it is alive unless it has died, it is a person. If an old man suffering from senile dementia is a person, and because he is a person has a right to live, even though his days are numbered and his future hopeless, still more has the embryo a right to live and be given an opportunity to realize and enjoy the latent possibilities of a human personality.

God alone has the right to give and take away human life. No monarch, no governing body, has a right to kill the individuals governed. The state may protect its citizens by taking the life of a citizen who menaces the lives of his fellows, and an individual may take the life of another if this is necessary to defend his own life against an unjustifiable attack. But no human being, nor any body politic, has supreme dominion over the life and death of any person.

The unborn child is fundamentally and essentially a person and has the rights of a person to life of which no human authority can deprive it.

Unless there is grave reason the child cannot be delivered before the normal time. Such premature delivery threatens the life and health of the child and can be justified only when the life and health of the mother or the mother and child would otherwise be seriously threatened and *the child can live outside the uterus* with the help of incubation and special care. There is, however, no tendency of physicians to bring about premature delivery without serious reason.

To deliver a nonviable fetus or embryo is an attack on the life of a human person and is never justifiable.

The usual argument of the obstetrician: unless I kill the child, both mother and child will die, is not morally sound.

It is never lawful to do a moral wrong for a good end.

To kill the child is a moral wrong, to save the mother's life is a physical good. One cannot do wrong for a good end.

The opposition of Catholics to the so-called "therapeutic abortion" has been a powerful factor in stimulating medical science to treat the conditions which were looked upon as justifying the surgeon in killing the child for the sake of the mother.

Furthermore the dilemma in practical cases is never so clear cut. An abortion is a serious matter for the mother. Some mothers have died from the abortion who might have lived and given birth to a healthy child. No physician can say with certainty: the mother will die unless I bring on a therapeutic abortion.

I remember a case which was referred to me in the hope that I could say that a therapeutic abortion was necessary. The mother had developed a serious cardiac condition and an acute psychosis. I could not say that it was lawful to kill the child and the pregnancy went on to term with the delivery of a healthy child and complete clearing of the mental condition of the mother.

Heart disease, even from the medical point of view, does not in itself indicate a premature termination of pregnancy. Thus J. E. Fitzgerald reports the management of 126 women with heart disease during 192 pregnancies in which no patient died during pregnancy or labour. Caesarean section was never resorted to on account of the heart condition.¹

An article by Lyle G. McNeile opens with a quotation showing the state of the situation in 1913.

"F. S. Newell, in addressing the alumni of the New York Lying-In Hospital, Nov. 12, 1913, said: 'Anyone reading the two papers on eclampsia which were presented at the last meeting of the New York State Medi-

¹ Am. J. Obstetrics and Gyn., Jan. 1935, 29.

cal Society, one on the surgical and one on the medical treatment of eclampsia, unless he has strong views of his own, would be in serious doubt as to how to treat a case of toxemia, because he is told on the one hand that the only real hope of the eclamptic patient lies in the immediate emptying of the uterus, . . . and on the other hand he is assured that the only safe method of treating eclampsia is by purely surgical means.' Twenty years later, the routine surgical treatment of eclampsia cannot be seriously considered by one who has even superficially examined the contributions of Stroganoff and others. The definitely lowered maternal and infant morbidity and mortality in clinics employing conservative methods are well established."¹

The following tables, by McNeile,¹ speak for themselves:

TABLE 1

Treatment of Eclamptic Patients During the Radical Period 1919-1924

<i>Types of Delivery</i>	<i>Number of Cases</i>	<i>Died</i>	<i>Mortality Percentage</i>
Caesarean section	15	7	47
Accouchement force	9	4	44
Spontaneous, with forceps or version	41	12	29
Not delivered (moribund)	8	6	75
Postpartal eclampsia	18	4	22
Totals	91	33	36

TABLE 2

Treatment of Eclamptic Patients with Magnesium Sulphate, 1924 to 1934

	<i>Number of Cases</i>	<i>Gross Mortality</i>	<i>Corrected Mortality</i>
From May, 1924, to February, 1926	54	16.66%	11.5%
From February, 1926, to July, 1929	71	7.0%	5.7%
From July, 1929, to November, 1932 ...	100	16.0%	10.5%
From November, 1932, to April, 1934 ..	34	11.76%	11.76%
Totals	250	12.85%	9.86%

¹ Lyle G. McNeile. Conservative treatment of late toxemias of pregnancy. *Journal of the American Medical Association*, 1934, 103, 548-552. P. 548.

TABLE 4

Mortality in Preëclamptic Patients Treated with Magnesium Sulphate from 1924 to 1934

	<i>Cases</i>	<i>Deaths</i>	<i>Mortality</i>
To July, 1929	143	4	2.80%
July, 1929, to November, 1932	228	2	0.80%
November, 1932, to April, 1934	169	3	1.76%
Totals	540	9	1.66%

Tuberculosis of the mother does not in itself indicate either the avoidance or the termination of pregnancy. According to a very exhaustive study¹ there is no evidence that tuberculosis is aggravated by pregnancy. "Interruption of pregnancy is not the method of choice in the treatment of pregnant women."² If adequate precautions are taken a tuberculous mother may even nurse her child without infecting it.³ Even the marriage of a tuberculous woman is a matter of prudent consideration and in general is not to be prohibited in the early stages of tuberculosis.⁴

B. INDIRECT ABORTION

Indirect abortion occurs when a pregnant woman takes a drug or undergoes an operation for the sake of relieving some kind of illness, but not for the sake of bringing on an abortion. Nevertheless the abortion follows from the drug or the operation even though it was not intended.

A pregnant woman has a duty to be careful about what drugs she takes and to postpone all operations if possible until after her delivery. If, however, a serious condition arises and it becomes a matter of grave concern that an illness arising during pregnancy be given immediate attention, she not only can but is in duty bound to take what steps are necessary to care for her life and health.

Let us suppose that her life is threatened by an acute appendicitis. She is operated upon but the operation brings on an abortion. She was justified in undergoing the opera-

¹ Fritz Schultze-Rhonof and Karl Hansen. Lungen-tuberkulose und Schwangerschaft. *Ergeb. d. ges. Tuberkuloseforschung*. 1931, 3, 223-371 (p. 344). ² L.c., p. 317. ³ L.c., p. 338. ⁴ L.c., p. 340.

tion and is not morally responsible for the death of the child.

The principles that are here involved must be clearly understood as they will be referred to from time to time in what follows. They are expressed by St. Thomas in discussing whether or not one may kill another in self-defense. He writes as follows:

"There is no reason why one and the same act should not be followed by two effects, one of which alone is intended and the other not intended. Moral acts, however, receive their character from that which is intended, not from that which is not intended, for that (which is not intended) happens by accident. . . . From the act, therefore, of one defending himself a double effect may follow: one, indeed, the saving of his own life; the other, however, the killing of him who attacks.

"An act of this kind, since what is intended is the preservation of one's own life, has nothing of an illicit character, for it is natural to everyone to preserve himself in being as long as he can. Nevertheless such an act arising from a good intention may become illicit if it is not proportionate to its end. And therefore if anyone in defending his own life were to use more violence than were required, it would be illicit." (2. 2. Q. LXIV, vii corpus.)

From this statement we may develop the following principles which will be self-evident to the reader on a little reflection.

(1) When two results follow from one and the same act, the goodness or badness of the act is determined from the good or bad character of that which was really intended.

(2) If the act is good then that which is ultimately intended must be good.

(3) The secondary evil consequence may be foreseen but it must not be desired for its own sake.

(4) There must be a due proportion between the good that is intended and the evil that follows without being intended.

Thus, for instance: If one shoots to kill another who attacks with no evident intention of killing, he is guilty of murder.

If for trivial ills a pregnant woman takes powerful drugs that bring on an abortion, she is guilty of taking the life of her child.

One cannot camouflage one's intentions. If the mother or surgeon intend to kill the child they are guilty of murder even though they use means which might help some physical illness. If they are really concerned with the treatment of the illness, they cannot be held guilty of the abortion which accidentally follows upon their honest attempt to cure a physical ill.

C. EXCISION OF A PREGNANT UTERUS ATTACKED BY CANCER

The general opinion of Catholic theologians is that the principles given above governing indirect abortion apply to the excision of the pregnant but cancerous uterus.¹

This general opinion was attacked by Gemelli, O.F.M., a doctor of medicine, Rector of the Catholic University of the Sacred Heart at Milan and professor of experimental psychology. Gemelli maintained that the opinion of the theologians was based on an inadequate knowledge of the

¹ For an enumeration of the opinions see: A. Vermeersch, S.J. *De causalitate per se et per accidens, seu directa et indirecta*. Periodica, 1932, 21, 101 *-116 *.

anatomical facts, and that when the surgeon clamps the uterine arteries he kills the child. The death of the child, though not intended in itself, is intended in the cause; and, therefore, the abortion is direct. The cure of the mother is obtained only by killing the infant and, therefore, the excision of a pregnant and cancerous uterus is an illicit operation.¹

Vermeersch replied by recalling the principles of St. Thomas: when two effects follow from one and the same act, one good and the other bad, and the good effect is intended, the action is in itself good. The bad effect may be conceived of as outside the intention of the agent.

Is the abortion that is produced directly or indirectly caused?

That it should be indirect, it does not suffice that it should not be the main thing aimed at, otherwise every therapeutic abortion would be justifiable.

It is necessary also that it should be a means to a *good* end, that is, the saving of the mother's life.

Whether or not the evil effect is certain to follow or may or may not follow has, according to Vermeersch, nothing to do with the case.

The test of one's good intentions is the answer. To the question: If the uterus were not pregnant would you remove it? the answer of course is that a cancerous uterus must be removed at once. In the so-called therapeutic abortions, would one tamper with the uterus if it were not pregnant? Most certainly not. It would seem, therefore, that when one removes a cancerous, but pregnant, uterus one directly and mainly intends to remove a cancer and not terminate a

¹ Agostino Gemelli, O.F.M. De l'avortment indirect. Nouvelle Revue Theologique, 1933, 60, 500-527; 577-599; 687-693. This was an answer to A. Vermeersch, S.J., Periodica, 1932, 21, 101 *-116 *. Vermeersch replied to Gemelli in his article: Avortment direct ou indirect. Nouvelle Revue Theologique, 1933, 60, 600-620; 694-695.

pregnancy. One does not operate on the child but on the uterus. In so doing one necessarily cuts off the food and oxygen supply of the child; but this is not primarily and directly what is intended.

The following example may help to make the matter clear, even though it limps as all comparisons do in accordance with tradition.

Let us suppose two men stranded on a pair of islands. One island is very extensive, with plenty of food and water, but affords no good shelter from the wind and rain. On the other island there is no food nor water but an excellent shelter. One man is so weak and sickly that he must live in the shelter. The other man is strong and healthy and lives on the big island and carries food and water in a little skiff to the sickly man. A forest fire starts at the far end of the big island and is eating its way, consuming everything in its track, all across the island. At this juncture a ship passes and sends a boat to the island. The boat can take away the strong man but for some reason the captain cannot or will not go to the desert island and carry off the weak man. The strong man is confronted with the alternative of saving his own life and leaving the sick man to his fate or staying on the island and feeding the sick man until both die of starvation or perish in the flames. If he separates himself from his island he cuts off food and water from the sick man who inevitably dies, just as the child dies in the womb when the vessels are clamped and its food and oxygen supply are cut off. Can the strong man be accused of murdering the weak man, if he avails himself of his opportunity, separates himself from his island and leaves the weak man to his inevitable fate? Evidently in leaving the island he intends only to save his own life and not to kill the weak man. But his action results with absolute certainty in the death of the weak man from lack of water and food. Indirectly he may

be said to will the death of the weak man. From his action in leaving the island two results follow :

- (a) one, primarily intended, the saving of his own life.
- (b) one, not intended but permitted, the starvation of the weak man, clearly foreseen but sincerely regretted.

There is a due proportion of life against life, for the strong man is not going off on a pleasure trip or for personal gain but to save his own life in the only possible way he can save it. It is clear that in leaving the island to save his own life, he is not guilty of any moral wrong.

If now instead of a strong and a weak man we imagine an able-bodied healthy mother and a sickly child stranded on the two islands, there is no essential difference in the moral problem. The mother has a greater obligation to care for her child than one man to care for another; but she would still be justified in taking the boat and saving her own life and leaving the child to its fate rather than feed her child a little longer till both died of starvation or perished in the flames. In fact, if she had a husband and family of children who needed her, it would be her duty to save herself for their sakes rather than perish with her sickly child.

On the other hand, suppose some condition which made it possible for the mother to save herself, but only by overpowering and killing the child. This she can easily do. If she does not overpower and kill the child both will certainly die. Is it not clear that a positive attack on the life of the innocent child is in itself a wicked thing and cannot be justified even for the sake of saving her own life? Is not this an essentially different thing from merely separating herself from her island and leaving the child to its fate?

And so it would seem that the moral theologians have argued correctly in maintaining that a cancerous but pregnant uterus may be excised, but that an abortion may not

be performed on a nonviable child, for any such abortion is a direct attack on the life of the child.

But someone might say, let us get around the problem of therapeutic abortion in this manner: instead of performing an abortion, excise the uterus. This would be an indirect killing of the child and therefore permissible. Your example shows that the mother may separate herself from her island and allow the child to die.

The answer to this is that it is an evident quibble. One excises a healthy womb instead of performing an abortion directly. The prime intention is to terminate the pregnancy and one mutilates the woman in order to do so. The strong man dynamites the shelter of the weak man instead of throttling him or stabbing him, or in some manner attacking him directly and killing him; but he kills him because he thinks that by so doing he can save himself. A moral evil can never be perpetrated for any good whatsoever. One life cannot be taken to save another. In this sense all men have equal rights to life, liberty and the pursuit of true happiness.¹

D. ECTOPIC GESTATION

The problem of surgical interference in ectopic gestation is now entering upon a new phase of discussion in Catholic moral theology. The original attitude that surgical interference is wrong while the child is nonviable was based upon the concept of the operation being primarily and essentially an abortion, and so a direct attack upon the life of the child. This is evident from the following question proposed to the Holy Office by the Archbishop of Cambrai in 1886.

¹ The situation here discussed is rather rare but not a mere theoretical problem. De Lee found only five cases in 68,000 consecutive pregnancies but reports combined statistics from other sources as one to 2,000 labors. He says: "If the carcinoma is discovered when the child is near viability, it may be justifiable to wait a few weeks in its interests." Joseph B. De Lee. *The Principles and Practice of Obstetrics*. W. B. Saunders Co. 6th Ed., 1933. P. 578.

"A pregnant woman carries her fetus, not in the womb, but in an extra-uterine cystic cavity. While the surgeon is carrying on a major operation on this woman he recognizes the abnormal locus of the pregnancy. He perceives that the fetus is living but nonviable. Has the surgeon the right to spare the mother a second operation, bound to be serious, and profit by the operation undertaken for another purpose to bring to light the fetus, even though this operation causes of itself the death of the unborn child (*bien que cette manoeuvre cause par le fait même la mort de l'enfant à naître*)?"¹

The Holy Office merely replied to this and the whole series of questions: "It cannot be safely taught in Catholic schools that the surgical operation termed craniotomy is licit, as was declared on May 28, 1884, likewise any operation that directly kills the fetus or the pregnant mother."²

On May 28, 1884, the Holy Office had already pronounced against the operation of craniotomy even when this might be necessary to save the life of the mother.

In 1895, the Holy See again affirmed the attitude that abortion was unlawful in order to save the mother.

On May 4, 1898, the Holy Office pronounced "a laparotomy, for the purpose of extracting from the mother an ectopic child, to be lawful as long as the life of the mother and the fetus might be seriously and opportunely cared for in so far as it might be possible." And this decree received the approbation of the Holy Father Leo XIII on May 6th of the same year.

On March 20, 1900, the question was laid before the Holy Office: "Whether it is lawful at any time to extract

¹ Translated from the series of questions in French reproduced by T. Lincoln Bouscaren. *Ethics of Ectopic Operations*. Chicago: 1933. Pp. 185-186. Bouscaren does not give the source from which he copied the questions.

² *Nouvelle Revue Théologique*, 1890, 22, pp. 73-74.

from the body of the mother the as yet immature ectopic fetus, the sixth month after conception not having been completed?"

And the Congregation answered no; but, as pointed out by Lehmkuhl, the decree did not receive the approbation of the Holy Father. And so the matter rested for some years.¹

It is evident that as far as surgical interference in ectopic gestation is concerned, the problem placed before the Holy Office was always the extraction of a living nonviable child and therefore the moral liceity of a direct attack on the life of the unborn child.

This being the case, the answers given to the various questions do not touch and therefore do not settle the problem that has since been raised.

In 1927, Rev. Henry Davis, S.J., of London, England, published in the *American Ecclesiastical Review* a study on ectopic gestation.² It took the stand that a tubal pregnancy is an abnormality and produces a pathological condition in the Fallopian tubes. Owing to this pathological condition, and not merely to the increase in size of the fetus, there is likely to be, at almost any time, a sudden and fatal hemorrhage that will cost the mother her life.

Davis therefore concluded that "The excision of part of the tube, provided it be granted that it is a serious peril to

¹ The above data are to be found in Augustinus Lehmkuhl, *Theologia Moralis*. Freiburg: 1910. I. Pp. 560-569, 1000-1013. See also Austin O'Malley, *The Ethics of Medical Homicide and Mutilation*. New York: 1922. Pp. 128-130.

Gemelli maintains that this decree later received the approbation of the Holy Father; and refers to the *Monitore Ecclesiastico*, 10, par. II, p. 52. Cf. *Nouvelle Revue Théologique*, 1933, 60, 691. Vermeersch disputed Gemelli's view, *l.c.*, p. 610. The dispute is an idle one, for if the decree did not receive the approbation of the Holy Father it certainly could and would, for the question proposed concerned a direct attack on the life of the child.

² A Medico-Moral Problem—Ectopic Gestation. *Am. Eccles. Rev.*, 1927, 77, 275-291; 405-414. This called forth a sharp criticism by the Rev. Patrick A. Finney, C.M., of St. Thomas Seminary, Denver, Colorado, 1928, 78, 54-71, and a rejoinder by Father Davis, *l.c.*, 413-416.

the life of the mother, appears to be as much justified as the excision of a dangerously infected pregnant womb that is beyond cure, because in the moral order, as well as in the order of physical causality, the one and only thing aimed at is the excision of the womb, the only purpose being to save the mother's life, and the accidental pregnancy has really no bearing on the situation."¹

In other words, Davis places the problem on the same grounds as the excision of a pregnant but cancerous uterus. He admits that it would be a direct attack on the life of the fetus were one to open a tube and shell out a fetus. He maintains that if the tube is so pathologically affected that it constitutes a danger to the mother's life it may be excised just as a cancerous but pregnant uterus may be removed without offense to the moral law.

In 1933, T. Lincoln Bouscaren, S.J., published his work: *Ethics of Ectopic Operations*.² It was originally a dissertation worked out under Arthur Vermeersch, S.J., the famous professor of moral theology at the Gregorian University, and in its present form bears the *imprimatur* of Cardinal Mundelein. Bouscaren goes thoroughly into the pathology of tubal pregnancy.

Bouscaren takes the position that "The excision of an unruptured pregnant tube containing a nonviable fetus, done for the purpose of saving the mother's life, is not a direct, but an indirect, abortion." (Pp. 177-178.)

"If in the judgment of competent physicians the danger is such that a *present* operation to excise the tube offers a *notably greater probability of saving the mother's life*, the operation will be permissible, even before the rupture of the tube or the viability of the fetus." (P. 179.) This excision may, under the cir-

¹ L.c., p. 411.

² Loyola University Press. Chicago: 1933. Pp. xv + 191.

cumstances, be performed when the ectopic pregnancy "is discovered in the course of an operation when the abdomen has been opened for some other cause." (P. 179.)

The physiology and pathology of the problem are essentially as follows. Details are given in Bouscaren with considerable completeness. The essentials may be read in most books on obstetrics.¹

In normal pregnancy the portion of the embryo resting on the uterine wall grows into the thick uterine mucosa. It sends out little processes known as villi. When these come in contact with the dilated capillaries they break into their walls. Blood escapes and bathes the villi in the tiny surrounding space. Soon blood vessels from the embryo grow into the villi and become capable of absorbing oxygen and nourishment from the maternal blood which bathes the villi. There is never direct communication between the blood vessels of the embryo and those of the mother.

In the placenta thus developed, most of the tissue comes from the embryo but there is a minute layer of maternal origin.

When pregnancy occurs in the Fallopian tube, essentially the same process takes place. The structure of the tubes and the uterus is essentially the same, but the layers of the tubes, particularly the muscular layer, are much thinner than those of the uterus. The same erosion of blood vessels takes place. This erosion involves now the muscular wall in the tube and much larger blood vessels than those that are eroded to form the villous spaces in the thick mucous membrane of the uterus. Consequently hemorrhages of some size take place from time to time into the tissue of the tubes

¹ De Lee, Joseph B. *The Principles and Practice of Obstetrics*. W. B. Saunders Co. 6th Ed., 1933. Pp. 31 f. and 422 f.

Williams, J. Whitridge. *Obstetrics*. New York: 1904. Pp. xxii + 845.

and may break through into the broad ligament or the peritoneal cavity. Once started, the hemorrhagic process continues, exerting pressure and distending spaces. Ever more and more erosion is occurring and new hemorrhages, small or great, are ever taking place. Thus a fatal termination is possible not only by the enlargement of the fetus until the tube bursts, but also by erosion of the wall of the Fallopian tube. De Lee says, "Indeed, in the tube the ovum acts like a rapidly growing destructive neoplasm." (P. 422.) In fact, after tubal pregnancy has advanced for some weeks¹ the woman has been bleeding, is bleeding, and will bleed still more, and perhaps fatally, unless something is done to stop the hemorrhage.

The remedy for this condition is not to incise the tube and remove the fetus, but to clamp the arteries and stop the hemorrhage. When this has been done, the fetus dies of asphyxiation. The tube, from which the blood supply has been cut off, and the dead fetus within must then be removed.

The opinions expressed by Bouscaren, supported as they are by the authority of Vermeersch and by a new orientation of the problem deriving from modern studies of the pathology of tubal pregnancy, may be looked upon as having sound probability from the point of view of moral theology. This being the case, any confessor, or Catholic surgeon, or pregnant mother can act upon them unless a new decree of the Holy Office should decide to the contrary, which, however, is unlikely. One is not now bound to follow the older opinion.²

¹ "Rarely do the first months of an ectopic gestation pass without symptoms which would direct attention to the pelvis as the seat of trouble. Once in a while a woman, previously well, has sudden symptoms of internal hemorrhage and may die from the same before a diagnosis can be made." De Lee, *op. cit.*, p. 428. W. B. Saunders Co.

² The Rev. Patrick A. Finney in the fourth edition of his *Moral Problems in Hospital Practice* (St. Louis: 1930. Pp. xiv + 208) still maintains that one must wait for rupture before operating.

E. CRANIOTOMY

The ordinary operation of craniotomy, as outlined in works on obstetrics, involves the following elements:

(1) Perforation of the skull.

(2) "After the opening is made, one finger is hooked into it, then the brain matter is thoroughly broken by means of a long forceps, taking special care to tear the tentorium and destroy the medulla, this to avoid the painful experience of seeing the child gasp after delivery. Two cases are recorded where the child lived a while in spite of the mutilation."¹

Similar instructions are given in a German text:

"Once the opening has been produced, the brain is stirred up by the irrigation tube that is introduced and washed out. In the craniotomy of the living child it is recommended that the destruction of the brain should be particularly thorough, reaching down to the medulla oblongata. Nothing is more painful for the physician and the relatives than when the child with a big hole in the skull and its hemispheres destroyed still breathes and cries after it has been delivered."²

The instruction to destroy the base of the brain goes quite far back in the history of obstetrics. H. Fehling in Müller's *Handbuch der Geburtshilfe*³ recommends the same procedure, lest there might come about the horrible spectacle of a child living on with its hemispheres destroyed.

In 1874, Arlt,⁴ in speaking of craniotomy, said, "After perforation one should, as all the text-books say, leave the further expulsion of the child to nature."

¹ De Lee, op. cit., p. 1112. W. B. Saunders Co.

² Ernst Bumm. *Grundriss zum Studium der Geburtshilfe*. Wiesbaden: 9th Ed., 1913. P. 793.

³ Stuttgart: 1880. Vol. III, p. 160.

⁴ *Beitrag zur Prognose der Perforation*. Diss. Breslau. Treibnitz, 1874, p. 6.

But in 1876, Berruti ¹ speaks of washing out the cerebrum, trepanizing the base of the skull and then leaving delivery to the course of nature.

The instructions which lay down in one way or another that the basal ganglia be destroyed, so as to be sure to kill the child, probably go back to Chailly-Honoré, who writes as follows:

“An extraordinary occurrence took place at the obstetrical clinic which made a most painful impression on those who witnessed it. An infant survived its delivery for one hour although the entire left hemisphere of the brain had been destroyed (*délayé*) by the scissors of Smellie. Should one not lay it down as a rule, to avoid the repetition of such an event in the future, that one should destroy completely the whole mass of the brain?” ²

The idea that such children cannot possibly live after perforation of the skull seems to have been so prevalent and fixed in the minds of the older physicians that they in general did nothing to make it possible for them to do so. In general, there has been no attempt at stopping hemorrhage or giving stimulants or any kind of care whatsoever. If in our day a brain was operated on without even an attempt to stop bleeding, it is quite evident that recovery from a brain operation would be the rarest of events.

Quite a number of cases have been reported where the

¹ Giuseppe Berruti. *La craniotomia nella pratica ostetrica*. Turin: 1876. Pp. 142-144.

² Chailly-Honoré. *Traité pratique de l'art des accouchements*. Paris: 1878. 6th Ed., p. 689. This event seems to have happened in 1844. See: A. Fortunato. *Sudi un caso di craniotomia a feto vivo con sopravvenza fetale*. *La Rassegna d'Ostetricia e Ginecologia*, 1920, 29, 149-154, p. 149. Fortunato mentions a number of such cases of survival along with his own observation and tells how one physician killed the child by standing on its neck.

child lived for an hour or so after serious injury to the cerebrum.¹

Francesco Reali reported the case of an infant born alive after craniotomy with a destruction of a part of the cerebellum, but although it cried and moved vigorously, it survived only about two hours.²

Several cases have been recorded where the child actually survived craniotomy or cranioclasia at birth.

Ludwig Pernice³ gives an account of a child one and three-fourths years old who was brought to him by her parents with a prolapse of the brain through an opening in the skull to the right of the mid-line. Pernice wrote to the physician who delivered the child and found that the opening had been caused by him at birth by perforating the skull with the Naegeli Perforatorium several times in several places. The perforation was followed by the escape of blood and, as far as the physician could see in the dim light, also by the escape of brain tissue. The child was then delivered by forceps. The physician called the parents' attention to the fact that the child was still living and carefully bandaged the extensive wound in an aseptic manner. The left side of the body was paralyzed. After about fourteen days the foot on the paralyzed side was moved but the arm and half the face remained paralyzed.

Gradually, however, the child came into possession of all its functions and when it was brought to Pernice, nothing abnormal could be seen even in the facial muscular play. Facial expression seemed that of a normal child.

¹ Cf. Fortunato, l.c.

² Francesco Reali. Caso di sopravvivenza di feto umano alla perforazione del cranio e distruzione di una porzione de cervello. Il Raccoglitore. Fano: 1845. Pp. 277-278. He spoke of two cases previously reported in the Raccoglitore which were more important than his own, but which I did not follow down.

³ Ludwig Pernice. Ueber einen günstig verlaufenen Fall von Perforation des Kindes intra partum. Centralblatt für Gynäkologie, 1900, 24, 918-921.

After searching the literature, Pernice could find no similar case. There is, however, at least one to be found.

"At a meeting of the Obstetrical Society of Edinburgh in 1859, Dr. Sidey exhibited a woman, aged fifty-two, upon whom the first steps of the operation of craniotomy had been performed. She stated that her mother had been two days in labour, when it was determined to deliver her; and to use the woman's expression, 'the dead instruments were screwed into my head.' The marks of the wound are quite visible and a considerable depression in the bone exists."¹

Müller (of Münden) reported the delivery of a hydrocephalic child by means of Scanzoni's cephalotribe. Though the head was under strong compression and must have been deformed into a kind of sausage-shaped mass, there was no perforation. It was resuscitated with difficulty and after some days began to nurse and take on weight.²

Müller attempted to, and did, save the child's life and so did not screw down the cephalotribe to the limit, but only just far enough to effect delivery. Such an operation is evidently not an attempt to kill the child but to save its life. Though dangerous, it must be remembered that the unborn child will certainly die.

Finney³ quotes De Lee's description of mutilating operations and then says, "All the above operations, performed upon the living child, are directly destructive of its life, and are therefore murder. The condition of the mother, no matter how desperate, can never morally justify any operation that is directly destructive of the life of her unborn child."

¹ Edinburgh Medical Journal, 1859, 5, p. 84.

² Amtl. Ber. ü. d. Versamml. deutsch. Naturf. u. Aerzte, 1865.

³ Finney, op. cit., pp. 81-83.

The wholesale condemnation of these operations is too sweeping. Among them for instance is brachiotomy or the amputation of an arm. When the child presents with one arm stretched out over its head a condition may arise in which spontaneous delivery is impossible. This is by no means always the case, but granted that the head is jammed due to the prolapse of the arm and spontaneous delivery is impossible, one cannot say that the obstetrician is bound to allow the child to die rather than save its life by the amputation of an arm. Such an operation does not necessarily kill the child. Döderlein used to tell of a famous case in Germany where the physician in such a situation amputated the arm. The child lived and grew to manhood and then sued the physician for malpractice, but lost the suit.

From the case reported above, even cephalotripsy can be performed with such moderation that it is a mere forceps operation and instead of being a murder is an operation directed at saving the life of the child, when the ordinary forceps delivery is impossible.

Furthermore, considering the modern advance in brain surgery, and our knowledge of the possibility of life with a considerable brain deficit, and the actual examples cited of cases that survived the first stage of the operation for craniotomy, it would be quite possible at the present time to perform a cranial operation in certain cases that would reduce the size of the head and save the life of the child by allowing it to be born.

Such a child would undergo, indeed, a serious risk by the operation but in very rare cases it might be the only way of saving its life. An adult may have a brain operation even at very serious risk of life and so may a child. From the cases cited above, if the child survived it would not necessarily be a hopeless idiot. And with due care a number of

children might well survive and develop most of the mental and physical functions of a normal human being.

The results of the removal of an entire cerebral hemisphere in adults throw some light on the possibilities of a cranial operation for delivery with all possible care to cause the minimum trauma necessary for extraction and the stopping of hemorrhage along with whatever measures might be necessary for resuscitation.

In 1928, Walter E. Dandy, of Johns Hopkins, reported the removal of the right cerebral hemisphere for infiltrating tumors in five cases.¹ Only one patient died without regaining consciousness. The others manifested no mental abnormality. One lived for three and one-half years after the operation and died from a recurrence of the tumor.²

W. James Gardner³ reported removal of the right hemisphere in three patients; two died but one recovered and was living and well twenty-one months after the operation. She walked "quite well without support. She was able to go up and down stairs without aid. She stated that she frequently went shopping and that her endurance was good. She washed dishes and clothes in spite of the fact that the left arm was useless." "Relatives and friends could discern no change in her personality or intellectual abilities."

Though the operation of craniotomy as described in the texts is a direct killing of the child, it is possible at the present day to perform a cranial operation which would not be a direct killing of the child, but an attempt to save its life.

¹ Walter E. Dandy. Removal of right cerebral hemisphere for certain tumors with hemiplegia. *J. Am. Med. Assoc.*, 1928, 90, 823-825.

² For a discussion of these operations see Jean L'hermitte. *L'ablation complete de l'hémisphère droit. L'Encephale*, Paris, 1928, 23, 314-323. Also *Lancet*, 1928, 1, 1337. John D. O'Brien reported a case in the *Ohio Medical Journal*, Columbus, 1932, 28, 654. See also Walter E. Dandy. Physiological studies following extirpation of the right cerebral hemisphere in man. *Bulletin of the Johns Hopkins Hospital*, 1933, 53, 31-51.

³ *J. Am. Med. Assoc.*, 1933, 101, 823-825.

No one should dream of trying to supplant Caesarean section by any such conservative cranial operation. The mother's life, however, has to be taken into consideration and in general her life is of greater importance than the problematical life of the unborn child. Where Caesarean section can be performed it will be the operation of preference. But when it cannot be performed, the child should not be allowed to die if a cranial operation offers an opportunity for saving its life. The physician must take it upon his conscience to decide, with a view to all the particular circumstances, what is to be done. The moralist can only say: No operation which is a direct killing of the child can be performed in order to save the life of the mother; and no operation which directly kills the mother can be performed in order to save the life of the child.

PRINCIPLES

1. The unborn child is fundamentally and essentially a human person and as such has the right of a person to life, of which no human authority may deprive him.

2. Premature delivery can be justified only when the life and health of the mother, or both mother and child, would otherwise be seriously threatened *and the child can live outside the uterus* with the help of incubation and special care.

3. To deliver a nonviable fetus or embryo is an attack on the life of a human person and is never justifiable.

4. When two results follow from one and the same act, the goodness or badness of the act is determined from the good or bad character of that which is intended as an end in itself, or as an efficient cause of the end desired.

5. If the act is good then that which is ultimately intended must be good.

6. The secondary evil consequence may be foreseen but it must not be desired for its own sake.

7. There must be a due proportion between the good that is intended and the evil that follows without being intended.

8. When two effects follow from one and the same act, one good and the other bad, and the individual intends the good effect as an end in itself or as an efficient cause of the end desired, the action is in itself good.

9. Neither mother nor surgeon would be responsible for an abortion which happened to follow an operation necessitated by an acute appendicitis.

10. It is the general opinion of Catholic theologians that a cancerous uterus may be excised even though it is pregnant.

11. When an ectopic gestation is diagnosed or found in the course of an operation, and it is the opinion of the surgeon that a serious hemorrhagic process is taking place, the tubes may be clamped to stop the hemorrhage and then excised.

12. Although the operation of craniotomy as described in the texts is a direct killing of the child, it is possible at the present day to perform a cranial operation which would not be a direct killing of the child, but an attempt to save its life.

13. When Caesarean section can be performed it will be the operation of preference.

14. When Caesarean section cannot be performed, the child should not be allowed to die if a cranial operation offers an opportunity for saving its life.

15. No operation which is a direct killing of the child can be performed in order to save the life of the mother; and no operation which directly kills the mother can be performed in order to save the life of the child.

PROBLEMS FOR DISCUSSION

In the light of the above principles and those on coöperation, the student should discuss the following problems.

1. A mother having eight children, ages varying from nine to twenty-three, is pregnant with this last baby, and wants to commit a criminal abortion so that the older children will not be disgraced by people seeing they are grown up and their parents are still giving life to babies. How could you inform the mother that this is criminally wrong and against her religion and the will of God?

2. Do you think that you should explain to married couples, that you know are easily led to cause abortions, about the sin that criminal abortion is?

3. Are therapeutic abortions permitted in the Church in the early stages of pregnancy?

4. Friend outside asking what should be taken to cause an abortion.

5. A patient is taken to the operating room for the removal of a tumor. The surgeon finds also in the abdomen a condition of tubal pregnancy which he claimed would have ruptured in another week. Should a Catholic instrument nurse assist at the removal of the tube or is it taken for granted that the embryo is already dead?

6. A patient is a mother of three other children and is three months pregnant. During her pregnancy she has a severe hemorrhage every ten days to two weeks and with each hemorrhage becomes weaker. Nothing is allowed to be done for her until the fetus becomes viable. At the end of six months when delivery is permitted the patient is so weak she dies. Is it fair to wait six months and forfeit the mother's life when it is very rare that a six months' baby lives? In this case the baby died.

7. Is it considered permissible to remove the appendices of two eight-year-old orphan girls who manifested no symptoms merely as an illustration at an anesthetist's convention? If it is, I can't see it and it was done.

8. Suppose a criminal came to a surgeon requesting a plastic operation on his face so as to change the aspect of his features or to attempt in some way to alter his finger prints and so enable him to escape detection.

Both were futile in the famous Dillinger ¹ case and would have little chance of success in any event. But leaving aside the problem of a physician undertaking to do what he knows is impossible, state clearly the principles of the problem.

¹ Cf. J. Edgar Hoover. The Practitioner's Responsibility when Fugitives Attempt to conceal Identity by means of Surgery. J. Am. Med. Assoc., 1935, 104, pp. 1663-4. Hoover says: "It is apparent, therefore, that the practitioner who undertakes to alter finger-print patterns is lending himself to an attempt to defeat justice and violating the high ethical standards of his profession" (p. 1664).

CHAPTER 16

THE MORAL PROBLEMS OF SEXUAL LIFE

Necessity of a Rational Solution. Moral honesty and clear intellectual insight are of particular importance in forming sound judgments on the problems of sexual life. Emotions blind reason in order that desires may attain to satisfaction without regard to consequences. The emotions of sexual life are the most powerful known to man and the sex drive the strongest desire experienced by man. The result is that the world in general justifies the unjustifiable, and various authors rationalize in accordance with man's sex cravings instead of reasoning by sound logical deduction. The world of today, particularly in certain regions of clinical psychiatry, seems to be suffering from emotional blindness. Some psychiatrists take the attitude that life is to be enjoyed and that its supreme joy is sex pleasure. This pleasure therefore is to be secured for the patient, and if his moral ideals block self-satisfaction, they must be analyzed away and the path opened to the attainment of the contentment which is conceived of as peace in the power to enjoy sex pleasure.

At all events there are not wanting psychiatrists who feel called upon to attack the moral and religious principles of the patient in order to relieve the conflict which is going on between desire and a sense of duty.

But such treatment is most unreasonable. It tends to give a false center to the patient's strivings. By its very nature the sex function can be exercised normally and rationally only at sporadic moments. It cannot be a routine constant

source of the joy of life. Only an abuse of the sex function leads to the acute mental difficulties of a sexual conflict which brings the patient to the psychiatrist. And it is unreasonable treatment to urge him, as some do, to still further abuse, unrestrained by moral and religious principles. The true joy of living comes from the opening of the mind to religious ideals, to the vast vistas of the intellect, to artistic enjoyments and the accomplishment of something worth while.

The Sex Function Essentially Good. In the past a difficulty of a very different character has been encountered. Very early in the Christian era an extreme view was put forward, the exact opposite of modern ideas on sex indulgence, namely, the idea that marriage and the marital relation are to be done away with entirely.¹ According to the Encratites (second century), marriage is no better than fornication and one must abstain from all sensuality to attain to the pure life of the spirit. The Manichaean code of morality (third century) condemned all sexual intercourse even in marriage.

These doctrines filtered down to or were revived in the Middle Ages as the doctrine of the Cathari and Albigenses (twelfth century).

St. Thomas gave the following clear refutation of these ideas in discussing the question whether no venereal act can be exercised without sin:²

"In human acts, that is to be termed sin which is contrary to the order of reason. Now this is the order of reason: that all things should be properly related to their end. And, therefore, it is not a sin if by reason a man makes use of the things at his disposal for the end to which they are ordained, in a proper manner and order,

¹ This doctrine is attributed by St. Irenaeus to the "Continents," Saturninus and Marcion. *Contra Haereses* I, xxviii; P.G., 7, 690. And Tertullian says, "*Haeretici nuptias auferunt.*" *De monogamia*, 1. P.L. 2, 930.

² St. Thomas. *Summa Theologica*, 2. 2. Q. CLIII, ii.

provided that the end be something good. Now since it is a true good that the bodily nature of each individual be preserved, so also is it an excellent good that the human race itself be preserved. As the use of food is ordained to the conservation of the life of the individual, so also the exercise of the sex function to the conservation of the entire human race. Hence St. Augustine says (*lib. De bono conjugali, cap. 16, in princ.*): What food is to the preservation of the life of man, this the marriage act is to the preservation of the race. And, therefore, if one can eat without sin, if it is done in proper measure and order so that it serves the health of the body, so also the use of the sex function can take place without any sin if it is done in due manner and order so that it is fitting to the end of human procreation."

Fundamental Principles. All the problems of morality can be worked out by asking ourselves whether or not any given end is good and the means taken to attain it are good and reasonable.

The ethics that we are here developing is frankly theistic. We have already pointed out¹ that our life must be conceived of as a service primarily to God and secondarily to our fellow men. We must, therefore, use all our powers of body and mind in the service of God and our fellow men. Every deliberate act is objectively good when it can be referred directly to the service of God or indirectly to Him because it is a service to our fellow men. If an act cannot be so referred it is evil. St. Thomas expresses the matter thus:

"Since it is the part of reason to set things in order, an act arising from deliberative reasoning, by this very

¹ *Supra*, p. 10.

fact is repugnant to reason, if, namely, it is not related to its due end, and so has the character of something evil. If, however, it is related to a due end, it agrees with the order of reason and hence has the character of a good."¹

Moral goodness is precisely this relating of human acts to a good end perceived by the understanding.

Anything that pertains to the development of true and perfect manhood in the individual himself, the genuine welfare of another person or the good of society is a worthy end of human actions. It is not necessary that every act should be consciously related to God, the ultimate end, in order that it should be naturally a good act. For whatever tends to the true welfare of individuals or society can be referred to God Who wills the welfare of individuals and society.² Whenever, therefore, a man has recognized the fundamental moral duty of living out life as a service to God, and from time to time consciously renews his will to serve God all the days of his life, all that can be referred in his life to God is so referred even though at the moment he makes no conscious reference of the act to its ultimate end.

And yet if a pagan, who had never made any reference of his life and work to God, were to do a kindly act, it could

¹ St. Thomas, *op. cit.*, 1. 2. Q. XVIII, ix corpus.

² The extreme position that all acts must be specifically referred to God and that there is no such thing as natural moral goodness was rejected by the Church in the condemnation of the following propositions.

All love of the rational creature is either that vicious cupidity by which the world is loved, which was prohibited by John, or that praiseworthy charity diffused in the heart by the Holy Spirit by which God is loved. Denziger, *Enchiridion Symbolorum*. Freiburg: 1908. 1038. Condemnation of errors of Michael du Bay. 1567.

There are only two loves whence all our volitions and actions arise: the love of God which does all things on account of God and which God rewards; and the love by which we love ourselves and the world, which does not refer what should be referred to God and for that very reason becomes evil. Denziger, *op. cit.* 1394. Condemnation of errors of Paschasius Quesnel. 1713.

not be termed morally blameworthy even though it lacked true moral goodness because it was in no manner referred to God.¹

The Abuse of Human Functions. Eating, drinking, speaking, writing, thinking, as well as procreation, are all functions with more or less definite purpose. Any use of these functions which is incompatible with their specific end and which cannot be referred to the service of God or man is an unreasonable activity. Because it is unreasonable and incapable of reference to the moral end, such perverted use of a function is always wrong.

Whether or not it is a trivial or a grievous wrong is going to depend upon circumstances and the degree and type of the perversion involved. The sex function holds by its very nature a special and peculiar place. For instance, one may eat or drink at any time without necessarily abusing a human function, for such functions serve bodily nutrition and, unless exercised to excess, food and drink are stored in the body and utilized in due season.

But the function of procreation has as its formal and essential end the production of a new human being who must be cared for throughout infancy, childhood and youth and helped to become independent in early manhood. To exercise the sex function and prevent procreation is an unreasonable abuse of a human function. To procreate a new human individual, without being in a situation to care for and educate one's progeny, is an improper use of the function and a wrong committed against the child.

"Therefore all seeking of sex pleasure, by an exercise of the sex function, outside of normal relations in lawful wedlock is morally wrong."

But is such seeking of sex pleasure always a grievous wrong?

¹ Cf. Th. Boquillon. *Theologia Moralis Fundamental*. Bruges: 1890. § 356. Pp. 631-633.

Abuse of the sex function is in itself a grievous matter because of the importance of the sex function which normally is concerned with bringing into life a new human being. This is a matter of very great importance. Lying is also the abuse of a function, the speech function, by which it is possible for men to know the thoughts of their fellow beings. It is, therefore, always a sin but not necessarily a grievous sin. Were it always a matter of great importance for every man to know the mind of another man, lying would be a grievous sin by its very nature and not only when it causes serious injury to another human being.

Abuse of the sex function is a serious matter also on account of its effects.

(a) It easily develops abnormal sex cravings that cannot be legitimately satisfied. Many are discontented because they cannot satisfy their sex cravings. But their sex cravings are violent and inordinate because of lifelong abuse of the sex function.

(b) When sex cravings have been inordinately developed by abuse of the sex function, it becomes a matter of very great difficulty to maintain proper control in various situations in life which might easily lead to an illegitimate pregnancy or infection with serious sex diseases or both.

The sane management of life means abstention from all forms of sex indulgence except in lawful wedlock.

VARIOUS FORMS OF ABNORMAL SEX INDULGENCE

A. SEXUAL DAY-DREAMING

All day-dreaming which goes beyond the limits of planning a future course of action is an idle waste of time. Furthermore, it has a tendency to withdraw one from action and develop a habit of seeking satisfaction in imagination

rather than accomplishment. It thus becomes a factor in the praecox withdrawal from reality and in some types of constitution is a much more dangerous practice than the individual realizes. When this day-dreaming takes on a sexual character, the tendency to withdrawal from reality is much stronger and the practice is particularly harmful and dangerous. It becomes an abuse of the sex function for it is associated with an activity of the sex organs, and because it is a voluntary abuse of the sex function it is grievously wrong. It is wrong also because it is likely to lead when opportunity arises to unlawful sexual acts and the development of abnormal cravings that cannot legitimately be satisfied.

Sex thoughts which come unbidden to the mind are not sins at all. Thoughts about sex matters become sinful when one seeks sex satisfaction in thinking about imaginary sex acts.

B. MASTURBATION

Masturbation is the attempt to obtain sex satisfaction by some form of self-stimulation. It is evidently a voluntary abuse of the sex function and for the general reasons mentioned above is grievously wrong.

Popular notions attribute to it, without reason, various dire consequences such as "softening of the brain," "wasting of the spinal cord," etc. Such things are due to syphilis and not to self-abuse or masturbation.

The Real Evils. Adolph Stern sums up the real evils fairly well. The Vienna symposium on which he bases his discussion¹ leaned to the view that masturbation leads to actual physical harm. Ferenczi, who took part in the dis-

¹ American Journal of Psychiatry, 1929, IX, 1081-1092. His discussion is derived from a Symposium on Masturbation for the Vienna Psychoanalytical Society published in 1912 and printed by J. F. Bergmann, Wiesbaden. (Not seen.)

cussion, pointed out that normal sexual activity involves preliminary excitation with an explosive consummation "depleting these sensory and muscular pathways of all excitation" with subsequent relaxation and mental satisfaction. In masturbation the stimulation, largely the result of fantasy, is incomplete; the excitations are not adequately discharged and instead of complete relaxation there results a neural tension and mental unrest intensified by a sense of guilt.

A second evil was mentioned by Freud in the symposium: the tendency to live in a world of fantasy and do nothing in the world of reality. Such withdrawal of an individual from reality is the mental basis of various psychotic conditions.

"He will the less readily subject himself to the difficulties reality presents, in the quest on the part of the individual to obtain his gratification by competition and conquest. There is nothing the individual need deny himself in fantasy. He can supplant all rivals. The most beautiful women are his at any time, with no effort. Reality offers him no such easy pleasures, and he therefore abides in fantasy activity and remains a masturbator."¹

The final result is the persistence of a psychosexual infantilism and the development of an abnormal character. The chronic masturbator

"shuns company, meets people with pain and discomfort, and longs to be alone, not that he really loves seclusion, but that he feels safest when removed from inquisitive eyes, and also because the 'solitary vice,' as it is called by some, can thus be practised with minimum danger of detection. The masturbator carries a great load of guilt, which is often conscious; he is overserious, too conscientious; the feeling that he is dishonest

¹ Stern, l.c., p. 1089.

impels him to exhibit a fanaticism for honesty, virtue, and uprightness. These characteristics are of greater pathological significance when present also in post-puberty periods, namely, during maturity. The masturbator is modest, shy, self-depreciatory, has definite feelings of unworthiness and inferiority. He is a mysterious, secretive sort of individual, timid, apprehensive, lacks initiative in action, overcautious and circumspect in what he plans to do.”¹

Consciousness of Guilt. Considering the general picture of the pathology of masturbation, it is evident that it is an abuse of the sex function, and as such grievously wrong in itself and because of its consequences. A normal consciousness of guilt is a wholesome element in the situation and not an added pathological manifestation. Such a normal consciousness of guilt is the realization that one is acting against the dictates of reason, and should be followed by a wholesome attempt to find a reasonable and satisfactory adjustment to the difficulties of life. In some individuals the anxiety factor in guilt is unduly accentuated because of native constitution or unwholesome training or both. This does not mean that all consciousness of guilt should be eliminated as some are now maintaining, but that the abnormal anxiety be treated by developing correct attitudes and wholesome principles of conduct.

Certain physicians advise patients to practice masturbation as a relief of sex tension. From the above analysis it is evident that such advice is unreasonable and therefore morally wrong. Nurses sometimes are called upon by physicians to advise and explain contraception to patients. I have not heard of a nurse being called upon to advise and explain masturbation, but it is evident from the principles of co-

¹ Stern (l.c., p. 1090) attributes this analysis of the masturbator's character to Sadger in the Vienna symposium.

operation¹ that to advise and explain how to do a wrong act shares the same character of immorality as the act itself. For the doctor or nurse, therefore, to advise masturbation to a patient is a grievous moral wrong.

C. KISSING AND EMBRACING

The following quotation from a non-Catholic nurse presents this problem in the following words:

"The writer, quite accidentally and herself unseen, saw two student nurses trip out to a motor car where waited two young men ready to take them for a moonlight drive. To the onlooker they seemed like just-opening June roses; the dainty slippers, the sheen of silk stockings, the pretty flowered frocks, and the smooth waves of shining hair made a picture which gave her much pleasure. Quite without intention, she was at the same point of vantage when these young things returned some hours later. The picture she saw as they came into the light was a sorrowful and depressing one; the pretty frocks were crumpled and had lost all their freshness and daintiness, and the delicate young faces were blotched and spotted. They had allowed two young men who were, it turned out, only chance acquaintances 'to maul and paw them about' in ways which could leave no pleasant memories or retrospective satisfaction."²

The answer of many young girls to the problem as thus presented would be: If I want to mess up my frock it isn't the business of any old maid to make a fuss about it; I pay for my own laundry. But is the matter merely a question of the laundry bill? Perhaps most of the young people of

¹ Cf. p. 153.

² Mary E. Gladwin. *Ethics. Talks to Nurses.* W. B. Saunders Co. 1930. Pp. 281. P. 191.

our day look upon kissing and embracing as entirely legitimate practices.

Judge Lindsey in a special investigation of the moral code of high school girls found the following list of principles:

Girls may go automobile riding at fifteen, presumably without the knowledge and consent of their parents.

They may drink freely when eighteen.

Kissing, petting and other such sexual liberties were looked upon as matters of course, "provided they were not too pronounced."

One particular girl whom the judge interviewed was uncertain as to the moral rightness or wrongness of actual sex experience but was inclined to the view that promiscuity in sex matters might be wrong.¹

In all probability, however, high school students in general hold that it is wrong to have promiscuous sexual relations, for such seems to be the strong belief of a definite majority of college freshmen and seniors as well.² Such studies, however, can never give us a standard of morality. This is particularly evident from the confusion of various judges from Rotarians to ministers on the relative gravity of different offenses.³ They at most show us that the world in general is in need of clear-cut, well-established principles as guides to moral conduct.

Judge Lindsey's investigation, however, gives us some idea of the consequences that may be expected from free indulgence in kissing and petting.

The judge estimates that about ninety per cent. of the

¹ Judge Ben B. Lindsey and Wainwright Evans. *The Revolt of Modern Youth*. New York: 1925. Pp. 364. Pp. 25-26.

² George Dudycha. The moral beliefs of college students. *International Journal of Ethics*, 1932-33, XLIII, 194-204.

³ T. M. Carter. Ethical attitudes of 623 men and women. *International Journal of Ethics*, 1932-33, XLIII, 279-293.

girls who go to parties in automobiles indulge in hugging and kissing.¹

Then "at least fifty per cent. of those who begin with hugging and kissing do not restrict themselves to that, but go further, and indulge in other sex liberties which, by all the conventions, are outrageously improper."²

Finally "fifteen to twenty-five per cent. of those who begin with hugging and kissing eventually 'go the limit.'"³

The judge's figures are rough approximations only but they are enough to show that kissing and embracing, if not essentially abuses of the sex function, can easily lead to such abuses with their whole train of consequences; and, therefore, one who earnestly endeavors to govern his life by reason must avoid the occasions of serious misfortune.

St. Thomas discusses the problem in this manner:

"I answer that it is to be said that anything may be termed a mortal sin in two ways:

"In one way by its very nature. And in this manner a kiss, an embrace, or touch by their very nature do not constitute a mortal sin. For these things can be indulged in without sex excitement either according to the custom of the country, or from necessity or a reasonable cause.

"In the other way a thing is a mortal sin from its cause, as one sins mortally who gives alms to lead another into heresy, on account of his evil purpose. Now, as it was said above (1. 2. Q. LXXIV, 7 and 8), consent to the pleasure of a mortal sin (*consensus in delectationem*) is a mortal sin; and not only consent to the act. And therefore since fornication is a mortal sin, and still more other species of luxury, it follows that

¹ Lindsey and Evans, op. cit., p. 56.

² Lindsey and Evans, op. cit., p. 59.

³ Lindsey and Evans, op. cit., p. 62.

consent to the pleasure of such a sin is a mortal sin, and not only consent to the act. And therefore when kissing and embracing are indulged in for sex pleasure they must for that reason be mortal sins and so are to be termed nothing else than libidinous acts. Therefore all such actions in so far as they are indulged in for sex pleasure are mortal sins.”¹

In other words, whenever one's genuine purpose is to indulge in sex pleasure outside of normal wedlock and he does so indulge, he commits a grievous sin; for he is deriving the pleasure of a sinful act, and though he is not going through the act itself, he is taking delight in that which is sinful. Furthermore, one has a grave obligation to avoid the occasion of sin, and to indulge in kissing and hugging under circumstances where further liberties might easily be taken is a grave sin because it becomes a proximate occasion of grave indecency or of fornication.

This may seem to some a severe and harsh doctrine but in reality one who lives up to it will be spared much bitter suffering. One who makes up his mind to enjoy the sex function only when it can be lawfully and reasonably exercised will not develop within himself a fountain of discontent by creating cravings that cannot be satisfied; nor will one have to go through the anxieties that must come from being father or mother of an illegitimate child; one will be spared the penalties of sex disease and will be able to turn one's mind to the enjoyment of the better things in life and one's efforts to the accomplishment of something worth while.

D. FORNICATION AND ADULTERY

Just as there are physicians who advise masturbation as a relief of sex tension, so also there are those who advise

¹ St. Thomas, *op. cit.*, 2. 2. Q. CLIV, iv.

fornication. Judge Lindsey advocates the legalization of a man and woman living together without being married and such a change in the opinions and customs of society that they might have children without incurring a social stigma.¹ He seems to do this on the ground that many marriages are unhappy, and therefore advocates a change in our social customs so that the unhappy will not be bound to live together when they desire to separate. It would be better to advocate a lengthening of the period of courtship, an investigation of the two parties and their mutual interests with blood tests, etc., in a word, the elimination of hasty marriages rather than the legalization of no marriage at all. Every attempt to make marriage or "living together" a temporary union must face the biological fact of the long period of human infancy and immaturity. The child needs to be cared for until he is about twenty years of age and even then needs a good deal of guidance and control. This much-needed care is best given in a well-organized family. Inadequate substitutes must often be made of necessity, but we cannot advocate the establishment of conditions which will strike at the welfare of the child.

There is no function in social life more important than the birth and education of children. Therefore everything concerned with this function must be guided and directed by reason and what is done against the dictates of reason in this matter is a sin.² To exercise the sexual act outside of normal wedlock is a crime against the child of a serious character and therefore a grievous sin. If one prevents conception it remains a serious abuse of the sex function and therefore a grievous sin.

Adultery is a double sin, the sin of fornication and the

¹ Lindsey and Evans, *op. cit.*, Chapter XX.

² St. Thomas, *op. cit.*, 2. 2. Q. CLIII, iii.

violation of one's own solemn contract or the invasion of the rights of another.

E. HOMOSEXUALITY

Homosexuality is an attempt to obtain sexual satisfaction from one of the same sex. The typical homosexual is not at all attracted to those of the opposite sex.

Types. There are two types of homosexuals:

(a) **PSYCHOGENIC**, i.e., those who have become so through the accidents of early experience, and

(b) **ORGANOGENIC**, those who are homosexual in virtue of abnormal functioning of the endocrine glands.

Women are much more demonstrative in their manifestation of affection to members of their own sex than men are to one another. What is ordinary social custom among women would be a sign of homosexuality among men. Consequently wide limits are to be allowed women in the natural manifestation of affection to one another. An internal criterion of the development of distinctly homosexual activity is the feeling of jealousy and the exclusive right to another's time, attention and affection. If your friend of the same sex manifests an interest in someone else, particularly one of the opposite sex, and you feel that your rights are being infringed upon, it is a sign that your friendship is passing beyond normal limits over into the borderline of homosexuality. From this exclusiveness of a homosexual friendship arises one source of its immorality. Normal marriage is the ordinary normal adjustment of an individual to life. The homosexual who has no interest in marriage finds a partner, forces a fixation on him or her, and so prevents the partner from attaining a full satisfactory adjustment to life. Real love of one's friend would sacrifice one's own homosexual satisfaction and encourage and assist the

friend to find another partner who could enable the friend to attain natural human happiness. But one element in the immorality of homosexuality is precisely this cruel sacrifice of one's friend to one's own selfish desires. Usually homosexuality involves also some kind of perversion of the sex function which, because it is an unnatural abuse, is on that account particularly unreasonable and exceedingly wrong.

One who recognizes the development in himself of homosexual tendencies by the above or any other criterion is bound to take measures to effect a different type of adjustment to the problems of friendship and sexuality. And those in charge of adolescents should take care that they are not forced to sleep together for long periods. In schools and colleges it is better to have three in a room than two. Should it be noticed that any two are overintimate in their friendship they should not share the same room, for once homosexuality is developed it is very hard to eradicate.

One who has absolutely no interest in the opposite sex and cannot bring oneself to contemplate courtship should realize that his or her adjustment in life must be on a non-sexual basis. This is a perfectly possible adjustment and can lead to peace and worth-while accomplishment. But the homosexual and also the sadist¹ commonly complain that they can attain sex satisfaction only in their own peculiar ways, and therefore they must do what they do. But it is not absolutely necessary that anyone should have *sex* satisfaction. The homosexual has no right to mar the life of another, nor the sadist to cut and kill, in order that he may have sex satisfaction. And the reason for this is that they can attain true happiness and genuine satisfaction without any sex satisfaction at all. They must use their ingenuity to effect a change in their sex adjustment or attain true hap-

¹ One who attains sex satisfaction by the infliction of pain or even death on another.

piness in life without indulging the abnormalities of their sex drive.

PRINCIPLES

1. Moral honesty and clear intellectual insight are of particular importance in forming sound judgments on the problems of sexual life.

2. The sex function in itself is essentially good.

3. Eating, drinking, speaking, writing, thinking, as well as procreation, are all functions with a more or less definite purpose.

4. Any deliberate use of these functions which is incompatible with their specific end and which cannot be referred to the service of God or man is an unreasonable activity and therefore wrong.

5. In general an act arising from deliberative reason which is not related to its due end has the character of something evil (St. Thomas).

6. Whether or not the abuse of a function is a trivial matter or a grievous wrong depends on circumstances and the degree and type of the perversion involved.

7. All seeking of sex pleasure outside of normal relations in wedlock is morally wrong.

8. Abuse of the sex function is in itself a grievous matter because of the importance of the sex function which normally is concerned with bringing into life a new human being, and because abuse easily develops abnormal cravings that cannot be satisfied and renders it a matter of great difficulty to maintain proper self-control in critical situations.

9. Day-dreaming, voluntarily indulged in as a form of sex indulgence, is an abuse of the sex function and grievously wrong.

10. Sex thoughts, which come unbidden to the mind, are not sins at all.

11. The attempt to indulge in sexuality by self-stimulation is an abuse of the sex function and grievously wrong.

12. Kissing and embracing, indulged in for sex pleasure by those who are not married, constitute an abuse of the sex function and are grievously wrong for that reason and also because they constitute a proximate occasion of more serious deordinations.

13. The supreme importance of the birth and education of children demands that everything concerned with this function be guided and directed by reason, and, therefore, what is done against the dictates of reason in this matter is a grievous sin.

14. Every attempt to make marriage, or "living together," a temporary union must face the biological fact of the long period of human infancy and immaturity.

15. The homosexual has no right to mar the life of another, nor the sadist to cut and kill, in order that he may have sexual satisfaction.

PROBLEMS FOR DISCUSSION

1. Today one of the married doctors had an emergency case about 3 A.M. So he slept in one of the large empty rooms because he was to operate at 8 A.M. I served his breakfast in bed and, of course, we got quite friendly. Later when he finished operating he came in while I was changing the bed linen and, well, he took hold of me and I pushed away but he finally got me cornered and tried to kiss me, so I got a little loud and he refrained somewhat, then left the room. How should I act towards this doctor? ¹

2. Dr. — asked me today to take my car and go for a long ride with him to the top of the hill. He is married—

¹ This raises the problem of the duty a nurse has of making an outcry in such a situation. That she has a right to do so there is no doubt. She must do so if it becomes necessary to prevent indecent liberties, otherwise she would be consenting to what she might easily have prevented.

In general it is a nurse's duty to report such things to someone in authority in order to spare other nurses like treatment in the future.

has a growing family and he has talked that way to me before. It puts one in a peculiar position. What I would like to do would be to slap his face and tell him to go home to his family where he belongs. But to avoid friction and the making of an enemy I just laugh these advances off and pretend I think he is just joking. When he starts telling me how attractive I am and begins telling how sorry he sometimes is of the mistake he made in his young life I just bite my lip. But there is a great deal I would like to say. Today I just laughed and told him that my home is located on just such a hill as he spoke of and that I had gone there the previous evening to see my mother with Mr. C.¹

3. I went into one of our most exclusive rooms to see how the patient was. He was up and about—had only come in for tests. I had only been in the room for a few minutes when he suddenly put his arms around me and kissed me several times. I was quite shocked and I didn't know what to say. As soon as I could free myself, I said nothing and left the room. I never mentioned the incident to anyone.²

4. I never know just how to take boys. I guess I don't understand them and I'm too independent. It is necessary to allow a boy to kiss and make over you in order to win him. Just how far should a girl allow him to go is a question I can't fully answer.

5. Two girls have a friendship that is more like a love affair. All nurses have tried to tell them about it but no use. This seems to be a big problem in all girls' schools. I

¹ The argument here presented is quite common. It is sometimes pure pretense and is merely used to work on a young girl's feelings to gain more easily a consent that would otherwise be refused. At times it is a genuine appeal for sympathy and an emotional rationalization to justify flagrant selfishness. The man appeals to the young girl to give him the happiness he craves but can never attain. This leads eventually to the girl becoming his mistress and prevents the man from doing what he should have done, working out an adjustment in his profession and in his own home. It keeps the girl from marrying and having a happy home of her own. The man satisfies his sexuality and the young girl leads a discontented and unhappy life with little or no hope of a change to better things.

² It would be a good rule to report at once all such actions to the supervisor in charge of the hall in order to discourage them in the future.

wish you would give sound advice and advise a way to prevent these "crushes," as they call them.

6. Nurses are often criticized for having close friendships between themselves—is there any harm in this?

7. Why should two nurses not be permitted to sleep together at night? Is this unethical?

PART FOUR

DUTIES TO THE FAMILY AND
OTHER SOCIAL UNITS

A. THE FAMILY

MARRIAGE

CONTRACEPTION AND THE LIMITATION OF
OFFSPRING IN MARRIAGE
RIGHTS AND DUTIES OF PARENTS AND
CHILDREN

B. THE STATE

CIVIL AUTHORITY

THE STATE AND THE FAMILY

C. THE PROFESSION

PROFESSIONAL DUTIES

PART FOUR

**DUTIES TO THE FAMILY AND
OTHER SOCIAL UNITS**

A. THE FAMILY

CHAPTER 17

MARRIAGE

The Essence and the End of Matrimony. St. Thomas points out the fact that marriage has a twofold nobility and perfection.

(a) Its formal and essential character consists in a certain stable and indissoluble union of minds in virtue of which each is bound to maintain an inviolable faith in the other.

(b) The final end and purpose of the matrimonial union is the generation and education of children.¹

Marriage, therefore, according to its essential character, is a pact of perfect friendship between man and woman, by which they agree to live together until death and to render to each other the marriage debt in order that they may bring children into the world and educate them for the service of God.

The rendering of the marriage debt becomes a mutual duty. Its refusal, when seriously requested, is a matter of grave importance, for such refusal tends to undermine that

¹ Cf. *Summa Theologica*, III, Q. XXIX, ii corpus.

perfect friendship which gives to matrimony its formal and essential character.

Origin of Matrimony. If we ask ourselves what is the origin of matrimony, it is clear that all things have their ultimate origin in God. Man comes ultimately from God and all the conditions of normal, happy, human life must have been laid down by the supreme Cause of causes, from Whom all proceeds and Who directs all things to their final end.

The idea was once prevalent in certain quarters that matrimony as now known in civilized society was a late development out of an original sexual promiscuity. The results of modern anthropological investigations have given no ground whatsoever for this theory. It was thought that a study of primitive man would reveal a promiscuous life without any vestige of the monogamous family. But Westermarck says:

"There are, it is true, statements to the effect that certain peoples live or have lived in a state of promiscuity without family ties; there are various customs which have been interpreted as survivals of such a state in the past; and the hypothesis has been put forth that promiscuity prevailed universally among primitive men. But neither the statements in question nor the supposed survivals of earlier promiscuity seem to me to possess any evidentiary value at all. After examining in detail all the cases which are known to me of peoples said to live in promiscuity, I have arrived at the conclusion that not one of these statements can be regarded as authoritative, or even makes the existence of promiscuity probable in any case."¹

What was actually found in studying the most primitive races was the monogamous family along with the obligation

¹ Edward Westermarck. *Marriage*. New York: 1930. Pp. 4-5.

of conjugal fidelity. Schmidt has brought together the evidence that the type of family in the most primitive races and the type that more commonly prevails in all races is the monogamous family with its attendant obligation of personal fidelity between one man and one wife.¹

As remarked by Gemelli:

"This condition of the moral elevation of primitive man ought to have a cause. The same ethnological researches show, as Schmidt has already pointed out (*La revelation primitive et les données actuelles de la science*. Paris: 1912. P. 69 sq.) that man was in a condition which rendered him capable of receiving the divine Revelation. In fact if science cannot demonstrate the fact, it at least proves its possibility. If this is so, then one must attribute to Revelation the moral elevation of primitive humanity. It is Revelation that enlightened man upon his moral duties and upon his destiny, a precious teaching which man little by little forgot."²

The Marriage Contract. Consequently, the character of the marriage contract is determined ultimately by the will of God, the Eternal Law, made known to us by revelation and the natural law, and understood by reason sitting in judgment upon conduct. It is with this latter that we are primarily concerned in a philosophical treatise. Reason points out to us the necessary conditions of the marriage contract. A man and a woman cannot say: A marriage is a

¹ Wilhelm Schmidt, S.V.D. *Der Ursprung der Gottesidee*. Vol. I, pp. 224 f. and elsewhere in this magnificent study of the religion and morals of primitive peoples (V. Vols. 8°. Münster: 1926-1934). The work appeared in an abridged form: *Ursprung und Werden der Religion*. Münster: 1930. Pp. xv + 296; of which we have the English translation. *The Origin and Growth of Religion*. London: 1931. Pp. xvi + 302.

² A. Gemelli. *Origine de la famille*. From the French translation by R. Jolivet. Paris: 1923. Pp. 183. P. 181. This is a very valuable little study based on original sources.

contract between ourselves and we can make it, therefore, anything we please. They have no more moral justification for such an attitude than they have for making morality itself anything they please. In making the marriage contract they are bound by the morality of their relations to one another and to their children. One may marry or not marry as he may decide; but when he marries he must contract in accordance with the natural law.¹

The essence, therefore, of marriage is a contract that gives rights and privileges and binds the parties to the performance of various duties. Though it has the binding force of any contract, it is not a mere commercial bargain but a mutual promise of fidelity founded on perfect friendship.

Attributes of Marriage. Out of the characteristics of perfect friendship and also out of the biological conditions in which man lives arise the two most important attributes of marriage: unity and stability.

The fullness of perfect friendship between man and woman is an absorbing and exclusive relationship. The woman gives her pledge in marriage on the basis of the assumption, which nature gives her the right to make, that her husband will belong to her alone, in the sense that he may have many friendly acquaintances but only one wife, only one woman from whom he asks the marriage act and to whom he gives the fullness of his love.

Corresponding to this psychological character of the exclusiveness of sponsal affection is the biological fact that the sexes are born in about equal proportion with, under normal conditions, a slight preponderance of males. This slight preponderance of males is necessary because of the sporadic

¹ This idea is expressed in the encyclical of Pius XI, *Casti Connubii*, Dec. 31, 1930. "The nature of matrimony is entirely independent of the free will of man, so that if one has once contracted matrimony he is subject to its Divinely made laws and its essential properties." *The Catholic Mind*, 1931, 29, p. 23.

killing off of males in war and the hazards of industrial occupation.

The following recent observations bear this out :

“Before the war there were in Germany 1,029 females to each 1,000 males. After the war this relationship was greatly changed, there having been 1,101 females to each 1,000 males. Gradually, however, the disproportionate number of females has been remedied and recent statistics place the relations at 1,059 females to 1,000 males, while the excess number of male births (1,000 girls to 1,055 boys) appears to be bringing about a further betterment. The present excess of females over males ranges around 1,900,000 and is found almost exclusively in the cities.”¹

This present ratio of 1,000 girls born to 1,055 boys is about what it has been in the past. To quote somewhat older data: Von Oettingen gives the following international statistics neglecting decimals.²

For every 100 girls there were born

- (a) 101 boys in Russian Poland.
- (b) 104 boys in England, Wales, Württemberg and approximately at this time in Norway.
- (c) 105 boys in Germany (Prussia, Saxony, Bavaria, Thüringen, Baden), France, Ireland, Switzerland, Holland, Scandinavia, Russia, Hungary.
- (d) 106 boys in Scotland, Austria (Cisl.), Servia.
- (e) 107 boys in Spain, Italy.
- (f) 111 boys in Roumania, Greece.

¹ Berlin Letter. Journal of the American Medical Association, 1934, 102, p. 2215.

² Alexander von Oettingen. Die Moralstatistik. 1882. Pp. xvi + 832 + clii. P. 55.

It is thus clear that neither polygamy nor polyandry can be a normal condition of the human race. Biologically there is no ground for the contention of some extremists that the stronger sex drive of the male should allow him two or more wives. Monogamy is founded, not only on reason, but also on biological conditions over which we have no control.

Indissolubility of Marriage. The second characteristic of marriage, stability, has also its psychological and biological foundations. True friendship is permanent, and the perfect friendship of matrimony demands mutual fidelity until death. Anything like temporary cohabitation cannot partake of the nature of perfect friendship.

The stability of the marriage relation is necessary also from the biological facts. The length of human infancy and childhood demand that the child be cared for and directed on up to early adult years. The infant cannot live at all, if forsaken by its parents; it cannot be educated and properly adjusted in life unless the parents care for it some twenty or twenty-five years. The mother cannot care for herself and her child during the early infancy of the child unless she is helped and protected by someone. It is reasonable and natural that the father should in some way supply this needed care and protection. Nor can the mother ordinarily well provide for the children in later years without the father's aid. It is therefore reasonable and natural that he should give the necessary aid for the care and protection of his children. This means that it is reasonable and natural that the perfect friendship commenced at marriage should be continued and that death alone should be a cause of separation and remarriage.

The primary end of matrimony is the birth and education of children. This is evident from the fact that by the marital act alone can children be begotten and, from the fact

alluded to above, the utter helplessness of the human infant at birth.

The Family as a Social Unit. The secondary end of matrimony is the joy and happiness of married life and the peace and protection of a stable, well-organized home. Just as the end of man is the service of God, the end of every social unit of the home and the state must be the service of God. The family, therefore, is to be a social unit devoted to the service of God. As individuals have a private and personal duty to worship God, so also the family has a social duty to worship God. This should be fulfilled by daily private family devotions and the presence of the members of the family at church on Sunday. It does not suffice that each member of the family performs in private his own religious duties. The family must be a unit organized and active in the service of God. This service consists primarily in bringing into the world a group of children, in the education of these children to a life of virtue and the service of society, and finally and above all, in leading them to know, love and serve God with all their hearts and souls. The father and mother of a family have a lofty function and inspiring work. Absorption in this work is the source of a vital interest in life throughout their decades of labor, and joy in its accomplishment the reward of their declining years.

Spiritual Character of Marriage. What modern writers stress so much as the all-important element in married life should be normally only a means to a higher end, a pleasure that one can sacrifice if called upon to do so. The formal and essential element in matrimony, as St. Thomas pointed out, is a union of minds and not of bodies, a perfect friendship based upon a common spiritual ideal, and not merely a condition making sexual satisfaction possible.

But the marriage act, like other human functions, is something good in itself when exercised according to reason.

Its performance in marriage and not outside of wedlock is the first requisite for its use according to reason, for those who undertake an act capable of bringing a child into the world must be in a position to care for the child from infancy to maturity.

The second condition is of a negative character. Nothing positive may be done to render conception impossible; for it is evidently unreasonable to exercise a function and frustrate the very end that the function is fitted to attain. This frustration of the marriage function by what is known as contraception is a matter of considerable discussion at the present time and demands special consideration.

PRINCIPLES

1. The formal and essential character of matrimony is a pact of perfect friendship, bringing about an indissoluble union of minds in virtue of which each is bound to maintain an inviolable faith in the other.

2. The final end and purpose of the matrimonial union is the generation and education of children.

3. The rendering of the marriage debt that children may be brought into the world is a mutual duty the refusal of which, when seriously requested, is a matter of grave importance.

4. The monogamous family, with the obligation of conjugal fidelity, and not a general promiscuity, obtained in the primitive condition of society.

5. The terms of the marriage contract cannot be anything upon which the contracting parties may choose to agree.

6. In making a marriage contract the contracting parties

are bound by the fundamental morality of their relation to one another and to their children.

7. The fullness of perfect friendship between man and woman is an absorbing and exclusive relationship.

8. Monogamy is founded, not only on reason, but also on biological conditions over which we have no control.

9. True friendship is permanent and the perfect friendship of matrimony demands mutual fidelity until death.

10. The long period of dependence of children on their parents makes it reasonable and natural that the perfect friendship commenced at marriage should be continued and that death alone should be a cause of separation and re-marriage.

11. As the end of man is the service of God, so the end of every social unit, the home and the state, must be the service of God.

12. The marriage act is something good in itself when exercised according to reason.

CHAPTER 18

CONTRACEPTION AND THE LIMITATION OF OFFSPRING IN MARRIAGE

Concept of Contraception. By contraception is ordinarily understood the use of one or another of various mechanical or chemical means of preventing conception.

The use of any such methods in marriage changes the character of the marriage act from something innocent and good to a wrong and sinful act. The act is good and innocent because it is the means established by God for the propagation of the human race. When married people perform the act, but with the aid of devices that prevent conception, they pervert a function ordained for the propagation of the human race to their own selfish seeking of sex pleasure, they lose sight of the higher ideals of perfect friendship, and reduce the bodily union of the married state to the level of prostitution.

It is therefore evident that this type of limiting the offspring in the family is essentially wrong. One may ask the question: Have a man and wife any right to limit the number of offspring or must they have just as many children as they can? Though one sometimes hears the statement that married people must have just as many children as they can, there is no basis for it in reason, nor in Scripture, nor in any decision of the Church. Married people should not have more children than they can properly care for.

Lawfulness of Limiting Offspring. In coming to a decision on the limitation of offspring one must bear in mind several important considerations.

(a) The tendency of human nature to shirk responsibility and effort and live at ease in selfish enjoyment of pleasure. If a husband and wife evade entirely the burden of child-bearing and child-care for purely selfish reasons, they cannot be said to lead a moral and ethical life. A married couple has a duty to God and the state in the development of a healthy wholesome family. To evade this duty without reason is in itself a sin. But if this evasion is accomplished by means of contraceptive practices it becomes a double abuse of a noble institution, the holy state of matrimony.

(b) The necessity of children for the permanent happiness of a married couple. Only exceptionally will two persons live happily together satisfied with each other's society for the normal span of human life. It is the children that ordinarily cement the marriage union.¹ It is providing for the children's future that lends interest to a life which might otherwise become empty and moody. It is the children's children who in old age brighten the declining years. A good-sized family is the best insurance that one can have for a happy life. How empty the latter years of a childless

¹ The statistics for divorce in England during the period 1897-1906 show that of every hundred couples who were divorced 39 were childless, 23 had one child, 16 had two, 18 from three to six, and only 4 had more than six children. (Roll, *Handbuch der Sexualwissenschaften*, 1921, p. 957).

Similar calculations for Holland give like results: 40 per cent. childless, 26 per cent. with one child, 17 per cent. with two, 8 per cent. with three, 1 per cent. with five. (Duynstee in *Verslag*, p. 37.)

In France for the period 1914-1919 the relation between sterility and divorce is even more striking. Of one hundred divorces, 51 were childless, 27 had one, 13 had two, 5 had three, 2 had four or more. (Theodore, Report to Congrès de la Natalité of Clermont-Ferrand.) R. de Guchteneere, M.D. *Judgment on Birth Control*. Eng. trans. London: 1931. Pp. 223.

Footnote, pp. 186-187. These statistics are suggestive but not conclusive, for the percentages of children for the non-divorced are not given. Still the ratio of childless marriages in the non-divorced is of the order of 1:6 rather than 1:2 or 1:3.

couple when pleasures no longer produce their aroma, and life has lost its zest! What a calamity is the death of an only child! When there are many children the death of one, though a genuine sorrow, is not crushing.

(c) The financial situation. Can the family income with such help as may be reasonably expected adequately feed, clothe and educate another child?

(d) The character of former children. If, for example, previous children are deaf mutes and idiots, parents should refrain from having further children.

(e) The illness of the mother which might make pregnancy a serious complication.

But how is this restriction of the offspring going to be brought about? The only answer is abstinence, either partial or total. The more frequently the marriage function is exercised, the greater will be the number of pregnancies. It would be perfectly lawful to attempt to limit the number of offspring by moderation in the use of the marriage function.

The Lawful Method of Limiting Offspring. It has long been supposed that conception takes place at the time of ovulation. Views about the time of ovulation have recently become fairly definite. Ovulation takes place between the twelfth and sixteenth days preceding the next menstruation. Owing to the short life span of the unfertilized ovum, one might regard, the week following the onset of menstruation, and perhaps some ten to eleven days preceding, as a sterile period.¹ Restriction of marriage relations to this

¹ Hermann Knaus. Eine neue Methode zur Bestimmung des Ovulationstermines. Zentralblatt für Gynäkologie, 1929, 53, 2193-2203.

K. Ogino. Ovulationstermin und Konzeptionstermin. Zentralblatt für Gynäkologie, 1930, 54, 464-478.

"Within the period which lies between the 20th and 24th days before the expected menstruation, conception is seldom possible."

During the period which lies between the first and eleventh days of the expected menstruation conception is impossible. Ogino, l.c., p. 478.

An editorial in the Journal of the American Medical Association (1934, 103, p. 757) says that "enough evidence has already been established to indicate that a strict observance of the method is insurance of sterility

period is sometimes spoken of as biologic contraception or the Ogino-Knaus method, from the two men who did most to present it to the public.

Emil Novak writes in the *Journal of the American Medical Association* as follows:

"I feel that anatomic evidence indicates the general reliability of the plan of periodic abstinence, especially in women with regular cycles. To take extreme examples, I have never, in the study of many thousands of ovaries, seen the earliest stage of corpus luteum formation (indicative of recent ovulation) in the immediately premenstrual or immediately postmenstrual phase. . . .

"The ultimate proof of the degree of fallibility of the Ogino-Knaus method of biologic contraception will come after accurate reports are available of large numbers of cases in which it has been employed. The clinical reports thus far published come chiefly from such champions of the method as Ogino and Knaus themselves, but they are apparently accurate, and they indicate the value of the plan. In Baltimore a considerable number of couples have been practicing the method with success, but always with the explanation that its degree of fallibility—for I feel quite sure it is not infallible—has not been determined, and that, so to speak, I will not be responsible for any pregnancies which may be incurred."¹

The question arises: Is it lawful for married persons with the conscious purpose of limiting offspring to exercise the marriage function only at those times when conception is very unlikely to occur? The answer is evident that if they

even beyond that associated with the employment of most of the contraceptive apparatus and medicaments." *Am. J. of Obstetrics and Gynecology*, 1935, 29, 53-63.

¹ *Journal of the American Medical Association*, 1934, 103, p. 1323.

Cf. also Leo J. Latz and E. Reiner. *Natural Conception Control*. J. Am. Med. Assoc., 1933, 105, 1241-1246.

have good reason for limiting the number of offspring they may do so by this method. It is lawful for them to exercise the marriage function at any time or to abstain at any time.

The encyclical of Pius XI on Christian marriage recognizes this in the following words:

“Nor are those considered as acting against nature who in the married state use their rights in the proper manner although on account of natural reasons either of time or of certain defects, new life cannot be brought forth. For in matrimony as well as in the use of the matrimonial rights there are also secondary ends, such as mutual aid, the cultivating of mutual love, and the quieting of concupiscence which husband and wife are not forbidden to consider so long as they are subordinated to the primary end and so long as the intrinsic nature of the act is preserved.”¹

When It Is Lawful to Limit Offspring. If the condition of the wife is such that a pregnancy is with her a matter of life and death, the only honest, upright solution is total abstinence. No method of contraception is absolutely certain, and in the long run the biological method is probably as safe as the mechanical and chemical methods and is free from their rather serious disadvantages.

Total abstinence in the married state is an extreme measure and should seldom be undertaken, even for religious and ascetic reasons. Celibacy outside of matrimony is quite a different matter. Life has many worth-while objectives and can be perfectly happy without any exercise of the sex function. But various neurotic manifestations may appear in man and wife when they attempt a celibate life in matrimony. If the wife's health really demands it, the situation must be faced and the problem can be solved by a wholesome

¹ The Catholic Mind, 1931, 29, p. 39.

use of the many possibilities which life holds out to one who would make a reasonable use of all that lies before him.

The arguments that are put forward in favor of the use of mechanical and chemical methods of contraception are arguments of expediency. What is expedient, however, is not always right, no matter how expedient it may be. Morality at times demands even the sacrifice of one's life, and he who does what is expedient in place of what is right is only an immoral coward.

Furthermore the arguments, though specious on first examination, are inconclusive and anti-social in their general trend. They are examples of what the psychiatrists term rationalization, that is to say, attempts to justify by a process of fallacious reasoning a yielding to emotional drives which is really base and unworthy.

Legality of Teaching Contraception. The following quotation, which gives the legal point of view on mechanical and chemical methods of contraception, is illuminating and valuable:

"In most of the states the selling or giving away of any instrument, drug, article or medicine for the prevention of conception, or the giving of information stating when, where and how such instruments or articles can be obtained, is made a criminal offense. The laws differ, of course, somewhat in the several states, but most of them are similar to the New York statute, which provides that 'a person who sells, lends, gives away, or in any manner exhibits or offers to sell, lend or give away, or has in his possession with intent to sell, lend or give away, or advertises, or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception, or for causing unlawful abortion, or purporting to be for

the prevention of conception, or for causing unlawful abortion, or advertises, or holds out representations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manufactures any such instrument, article, recipe, drug or medicine, is guilty of a misdemeanor, and shall be sentenced to not less than ten days, nor more than one year's imprisonment, or be fined not less than fifty dollars, nor more than one thousand dollars or both fine and imprisonment for each offense.'

"This law has been in force since 1887; it has been declared constitutional." ¹

Arguments Advanced for Contraception. Contraception is said to be in the interests of the mother, the family and the general population.

(a) It is maintained that frequent pregnancies undermine the health of the mother. But as a matter of fact pregnancy is a physiological function. It is not a disease process and does not of itself attack the health of the mother.² If the mother is really ill, so that pregnancy might be an added burden on her health, she can abstain at such times as pregnancy is likely to occur. If her state of health is so serious that no risks are to be taken, then total abstinence is the only solution for no method of contraception is infallible.

¹ Lloyd P. Stryker. *Courts and Doctors*. New York: 1934. Pp. xxv + 236. Pp. 187-188. By permission of The Macmillan Company, publishers.

² Cf. hereon the detailed investigation by Guchteneere, *op. cit.*, pp. 122 f.

(b) It is maintained that the poverty of the family demands the restriction of its members. That may be, but this restriction must be brought about in an ethical manner. In the meantime everything must be done to relieve poverty rather than leave the poor in their unfortunate circumstances and attempt to forbid children to those who cannot obtain a living wage. If the money and effort which have been spent on the birth-control movement had been devoted to relieving the conditions of the poor, a positive step forward would have been made in social progress.

The following quotation from the encyclical letter of Pius XI on Christian marriage gives the solid substantial way of dealing with this problem.

“Care, however, must be taken that the parties themselves for a considerable time before entering upon married life should strive to dispose of or at least to diminish the material obstacles in their way. The manner in which this may be done effectively and honestly must be pointed out by those of experience. Provision must be made also in the case of those who are not self-supporting, for joint aid by private or public guilds. . . .

“If, however, for this private resources do not suffice, it is the duty of the public authority to supply for the insufficient forces of individual effort; particularly in a matter which is of such importance to the common weal, touching as it does the maintenance of the family and married people. If families, particularly those in which there are many children, have not suitable dwellings; if the husband cannot find employment and means of livelihood; if the necessities of life cannot be purchased except at exorbitant prices; if even the mother of the family, to the great harm of the home, is compelled to go forth and seek a living by her own labor; she, too,

in the ordinary or even extraordinary labors of child-birth is deprived of proper food, medicine, and the assistance of a skilled physician, it is patent to all to what an extent married people may lose heart, and how home life and the observance of God's commands are rendered difficult for them; indeed, how great a peril can arise to public security and to the welfare and very life of civil society itself when such men are reduced to that condition of desperation that, having nothing which they fear to lose, they are emboldened to hope for chance advantage from the upheaval of the State and of established order.

"Wherefore, those who have the care of the State and of the common good cannot neglect the needs of married people and their families, without bringing great harm upon the State and on the common welfare. Hence, in making the laws and in disposing of public funds they must do their utmost to relieve the penury of the needy, considering such as one of the most important of their administrative duties." ¹

(c) Contraception is said to be necessary because the world is tending to over-population.

"The real solution," says Raymond Pearl,² "is obvious. There must be a restriction on the rate of reproduction of the human species, taken as a whole and in a statistical mass. Furthermore, as every biologist knows, there will be a restriction. In most populations it has already begun. The question which one has to think about is: Shall this restriction be wholly involun-

¹ The Catholic Mind, 1931, 29, pp. 60-62.

² Raymond Pearl. The Menace of Population Growth, in Birth Control: A Symposium edited by Adolf Meyer. Baltimore: 1925. Pp. 50-61. P. 60. By permission of Williams & Wilkins, publishers.

tary and unintelligent—forced by the stern pressure of natural causes, of famine and disease due to exposure and hunger, with all the bitter suffering which this implies, or shall it be in some part voluntary and intelligently controlled? If mankind, organized into a social structure, deliberately and purposely sets itself to the task of intelligently controlling its rate of reproduction, the world can continue indefinitely to be a pleasant place in which to have one's being. If mankind refuses to do this, on any grounds whatever, our children's grandchildren and great-grandchildren will probably see such an amount of suffering, a standard of living so lowered, as to make even these parlous times seem paradise indeed."

Supposing the need of immediate restriction of the birth rate, this must be accomplished not only intelligently and with due deliberation but also ethically. Morality cannot be sacrificed to expediency.

But is the alarm about over-population well founded? If increase in the population maintained its present rate there would be over-crowding in the not dim distant future. But the percentage increase is undergoing a marked decline. The contraceptionists point out that the death rate is also declining. This is true. It seems, however, that the birth rate is slowly approximating the death rate, which will mean a stationary population. The death rate will probably not undergo a further marked reduction. It cannot drop to zero. The birth rate can fall below the death rate and this will mean a decreasing population. Should populations decrease to any great extent this will have its own dire consequences.

It is easily seen that the average-sized family must be at least three children per family to maintain a stationary

population. If every man, woman and child eventually married and each couple had two children who lived to have two more children, the population would remain stationary. But not all children live long enough to marry, some live long enough but do not marry, and some marry but do not have children. The average-sized family must therefore have over two children and it is usually estimated that from three to four children in the average family are necessary to maintain a stationary population. With the present advocacy of birth control more and more families are childless, fewer and fewer attain the minimum level of three children and still fewer have well over three children to balance the average lowered by the childless matings.

Furthermore, birth control is being used by the so-called better and more educated classes, who could best afford to have children, and who might be supposed to give birth to the more wholesome type of child.

This leads us to the next argument in favor of birth control.

(d) The contraceptionists recognize the fact that the lower classes are having more children per family than those who move in the higher strata of social life. Immigrants are pouring into America and begetting many more children in proportion than do native Americans. Soon the immigrant population will have conquered the land and the old-American died out entirely.

It is not at once clear that the later vigorous stock of immigrant is biologically inferior to those who came over in colonial times, nor that honest artisans, as a class, are biologically inferior to the children of wealthy families. However, supposing that it is so, have we a right to save the present upper classes and the old-Americans for posterity by teaching the poor and the immigrants an essentially immoral practice?

Furthermore, if we attempt it, are we going to meet with any marked success?

"Physicians frequently claim that contraceptive knowledge is widespread among even the poorest families. The difficulty is that such families fail to take practical advantage of their knowledge."¹

This is perfectly true and much of the excitement about illuminating the ignorant poor in this matter is misspent effort which will have no effect on those whom contraceptionists most earnestly desire to influence, but such propaganda will stimulate the many among the educated to a still further reduction of their offspring. Those who think they can influence the morons to practice contraception effectively must have an intelligence quotient dangerously near the level of morosity.

To sum up we may say that any method, by which means are taken during marital intercourse to render conception impossible, is morally wrong because

(a) it is a perverted use of a very important human function. Perversion of a function admits of degrees of magnitude. Its gravity is to be judged by the nature of the function and the attending circumstances.

(b) a perversion of the marital function is a matter of great importance, since the marriage function concerns the existence of a possible human being—the *homo in potentia* of whom St. Thomas speaks.²

(c) it is a perversion which deprives the marriage relation of its sanctity and reduces it to the level of illicit sexual practice.

(d) it is a perversion which obliterates from the minds of

¹ Reynold A. Spaeth. Birth Control in Relation to Public Health and Industry, in Birth Control: A Symposium edited by Adolf Meyer. Pp. 116-121. P. 121. By permission of Williams & Wilkins, publishers.

² St. Thomas. Quaestiones disputatae. De Malo. Q. XV, ii corpus.

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the married parties the ideal of elevating each other to the highest moral perfection and establishing a family devoted to the service of God.

(e) it is a perversion which by reason of its vast extent is undermining the power and welfare of the state.

Contraception in married life, therefore, is always a grievous sin.

Giving Advice on Birth Control. Can a nurse or social worker or physician or anyone else give instructions to others in the methods of contraception?

(a) One can explain the advisability and necessity of abstinence, either complete or partial. One can explain the sterile period and, when reason exists, urge that the marriage function be performed only during this period.

(b) One cannot teach, nor in any way aid, by procuring or selling articles, the mechanical and chemical means of contraception; for one cannot formally coöperate in the sin of another.

PRINCIPLES

1. Contraception may be defined as the use of one or another of various mechanical or chemical means of preventing conception.

2. The use of any such method in marriage changes the character of the act from something innocent and good to a wrong and sinful act.

3. A married couple has a duty to God and the state to develop a healthy, wholesome family.

4. If a husband and wife evade entirely the burden of child-bearing and child-care for purely selfish reasons, they cannot be said to lead a moral and ethical life.

5. It is the children who ordinarily cement the marriage union and guarantee the happiness of the home.

6. If solid reasons demand the limitation of offspring,

married persons may abstain from the marriage act at such times as conception is likely to occur, provided that when they do use their rights they exercise them in the proper manner.

7. It is illegal in most states to sell, lend or advertise contraceptive articles or give information about contraceptive methods

8. It is far more important to undertake measures to relieve poverty than to attempt to relieve the poor of the burden of children by explaining to them methods of birth control.

9. One may not teach, nor in any way aid, by procuring or selling articles, the mechanical and chemical means of contraception; for one may not coöperate formally in the sin of another.

10. One may advise the limitation of offspring when such limitation is necessary; one may explain the sterile period and, when reason exists, urge that the marriage function be performed only during this period.

PROBLEMS FOR DISCUSSION

Discuss the following problems in the light of the above analysis of contraception and the chapter on coöperation:

1. A Catholic nurse desired to go on for training in social service work, so she applied to a prominent school in a large city. She was asked about her religion and on answering that she was a Catholic she was advised to consider matters before entering, for she would be required to instruct poor families in methods of contraception. What should she do about the matter?

2. A Catholic social service worker was handed a slip giving instructions about dealing with a case. Among these instructions she read: Give instruction in contraception. She took the slip to the psychiatrist and said, "I cannot give instruction in birth control because I am a Catholic." He

merely pointed to the sentence and replied, "You see what is written there, don't you?" and walked away. What should the worker do in this situation?

3. A nurse is asked to buy and bring to a home certain contraceptive articles. She is in great need of employment on account of illness and financial straits in her own home. She feels sure that if she refuses she will give offense and another nurse will be called to take her place. What should she do?

4. Some of the nurses were together discussing birth control. Most were of the opinion that abortions were wrong, but that the use of contraceptives didn't seem so wrong. The basis of their argument was "human nature"—it is human nature to desire that act and too the Lord instituted the passions in us and He could do no wrong.

5. Many of the nurses at present are in favor of birth control. Since I am a Catholic, I do not believe in it, but what arguments can be offered against it that will not sound too religious from my own point of view?

6. O.B. patient very poor, delivered twins. Patient, very sick, having convulsions and afterwards psychotic. In my mind it seems that birth control would be justifiable in a case of this sort.

7. A woman who has been violated is brought to the hospital. The surgeon orders a bichloride douche. The superintendent of nurses objects to the administration of the douche.¹

8. A healthy couple, in comfortable circumstances, marry with the mutual understanding that they will exercise the marital act only in the sterile period.

¹The general opinion of moral theologians (Cf. e.g., A. Lehmkühl. *Theologia moralis*. 11th Ed. II, 1013) is that, just as a woman can defend herself against violation, she may use every means to prevent the illegitimate conception. The superintendent may have had some false ideas about the douche being equivalent to an abortion, which of course is out of the question. After even an enforced pregnancy one could not take the life of the child to save oneself from the shame and disgrace that would ensue. Discuss the problem from the point of view of the douche being administered to prevent a possible infection.

The following works will give the student a fair introduction to the problem of birth control.

- COOPER, JOHN M. *The Ethics of Contraception*. International Clinics, 1930, Vol. III, Series 40. Pp. 229-242.
- *Contraception and Altruistic Ethics*. International Journal of Ethics, 1930-1931, XLI, 443-460.
- GUCHTENEERE, R. DE (M.D.). *Judgment on Birth Control*. London: 1931. Pp. 223. This is probably the best and most scientific investigation of the subject.
- MARCHANT, SIR JAMES (Editor). *Medical Views on Birth Control*. London: 1926. Pp. xx + 175.
- MEYER, ADOLF (Editor). *Birth Control: Facts and Responsibilities*. A Symposium. Baltimore: 1925. Pp. xiv + 157. A short presentation of the subject by advocates of birth control.
- MOORE, EDWARD ROBERT. *The Case Against Birth Control*. New York and London: 1931. Pp. x + 311. Contains a good bibliography.

CHAPTER 19

RIGHTS AND DUTIES OF PARENTS AND CHILDREN

Prerequisites for Marriage. Marriage, as we have pointed out, partakes of the nature of a contract. When one makes a contract he must be reasonably capable of carrying it out. Idiots cannot make a contract because they cannot understand what a contract is. Idiots therefore cannot marry. Furthermore, when one makes a contract one must not only be able to understand its terms but also carry out its provisions. The marriage contract involves not only the generation but also the care and education of children. Over and above physical health and adequate intelligence those who marry are bound to have good moral ideals. An immoral person who has no intention of rearing good moral children has no right to marry. In any given case it is very difficult to set the limits of intelligence and moral worth below which one has no right to marry at all.

No priest could function in his capacity as a priest at the marriage of one whom he knew to be an idiot. But there are others who, to use the phrase of the encyclical of Pius XI, "are to be dissuaded from entering into matrimony."¹

A person *hic et nunc* suffering from a venereal disease must not marry, and if he or she does it is a grave offense against the law of God, because of the danger of infecting the other partner and also children who may be born. This is particularly true of syphilis. Its final and ultimate cure

¹ The Catholic Mind, 1931, 29, p. 42.

is so problematical and the possibilities of infecting the other partner so significant that one who has ever had syphilis should never marry without informing his partner. And even then the time of marriage, if agreed upon, should be determined only after consultation with physicians selected by each individual concerned.¹

The Duties of Parents. Apart from the duties involved in the proper exercise of the marriage function and the obligation of mutual fidelity, married persons have a fundamental duty to love and care for their children. This care involves their physical, moral and religious well-being.

The mere physical care of children, particularly with parents who cannot afford servants, limits the activity of the mother and often ties down the father to the home on many evenings when he might like to be elsewhere. Matrimony involves many sacrifices on the part of parents, but they are sacrifices involved in the original marriage contract which requires the contracting parties to take proper care of their children.

The moral and religious training of children demands of the parents an honest attempt to satisfy their own minds on the major problems that confront mankind, and therefore sincerely to adopt a religion or work out a philosophy of life. The parents must then give this religion or philosophy of life as their legacy to the child. Children who are left to flounder about and develop their own moral and religious principles are at a great disadvantage when they face pre-

¹ "In rare cases a luetic child is delivered from an apparently healthy mother. Engman suggests that such a mother is a spirochete carrier. The history usually given is that the husband has been treated more or less successfully for syphilis before marriage. The limit of safety, that is, the time required before he can procreate healthy offspring, is variously estimated as from two to twelve years, but much depends on the success of the treatment. Even if at the time of coitus he has no infective lesions, the child is usually syphilitic, or it may show signs of the disease later in life." Joseph B. De Lee. *The Principles and Practice of Obstetrics*. W. B. Saunders Co. 1933. Pp. 533-534.

maturely any of life's many and serious trials. They lack even a preliminary orientation in life's difficulties. They are at sea without a compass and with no knowledge of the stars. Their mental hygiene has been utterly inadequate.

The idea expressed by some, that parents should explain to a child the various religions and philosophies of life and then let the child choose what he thinks best, is asking far too much of the child mind. Such a course would merely lead to confusion and inability on the part, even of a bright child, to adopt any principles whatsoever. It would be equivalent to turning the child loose in the world without principles and ideals.

Those who think they can refrain from giving any guidance till the child is old enough to think for himself, in the first place, deceive themselves. The child gathers ideas and principles from the daily life and conduct of the parents. They teach the child their own attitudes and beliefs in spite of themselves. Furthermore, the child needs many principles and ideals long before he is able to think for himself. In the time that elapses between the advent of speech and the first years of puberty the ordinary child is confronted with practically all types of moral problems.¹ He adopts his moral and religious principles in this period whether he lives up to them or not. But at no time in this period is he really capable of passing a sound judgment on the religions and philosophies of the world. To ask a young man or woman in early adult years to pass such a judgment and adopt principles of life and conduct is asking to do what has already been done or undo what has become ingrained into the very being by years of habitual practice.

The parent, therefore, who does not give to the child a view of life that has been honestly worked out fails to fulfill

¹ M. C. McGrath. A study of the moral development of children. Psychological Monographs, 1923, XXXII, no. 144, pp. 190.

the terms of the marriage contract to care for and educate the children.

Duties of Children. Corresponding to the parents' duty to love the child is the child's duty to love his parents; and corresponding to the parents' duty to educate the child is the child's duty to allow himself to be educated and to do all in his power to make good use of the opportunities that he receives. It is unreasonable and therefore wrong for a parent to refuse a child the opportunity of an education; and it is likewise unreasonable and wrong for a child to neglect the opportunities afforded him by the parents. But the guilt of the child's neglect is often tempered by ignorance.

Besides being obliged to make good use of opportunities the child has a duty to honor and obey his parents. Honor is the reverential respect that we give to another because of his own intrinsic merit. Every good father and mother makes a great sacrifice in the care and education of a child, and because of that fact is deserving of the reverential respect which is shown to one of true merit. It is only honesty to recognize merit where merit is due and the child, above all others, should give this recognition to his parents. Perfection is not demanded of those we honor, or reverence would be unknown in human society. Therefore in spite of many failings, parents do not lose their right to honor and respect from their children, and the children in spite of much untowardness do not forfeit their right to the love and protection of their parents.

Every child is bound to obey his parents. No social unit can continue as such and work successfully for its own proper ends unless directed by someone who holds the place of supreme authority in that social unit. In the family it is ordinarily the father, whose chief duty it is to provide for all, to whom the place of supreme authority falls in the so-

cial unit which the family constitutes. Consequently the child owes obedience to the father and also to the mother or to whoever may at the moment be actually managing the affairs of the household.

Throughout all his life the child owes to the parents love and respect. And when the parents are no longer capable of taking care of themselves it is just and reasonable that the child should do for them in their old age what they did for him in his infancy.

But the child does not owe to his parents obedience throughout all the days of his life. The parents' right to obedience ends when they have equipped the child for his career in life. They may and should advise the child as to his future career and the child should prudently consider their advice most seriously. But the child must live in the career and not the parents; the child, therefore, in the last analysis must be responsible for the choice of his own career. They may refuse the child permission to enter upon a career prematurely, but when education has been so far completed that it is time for the child to choose and enter upon a career, it is the child's responsibility to make his own choice and the parents have no right to force their own ideas upon the child who on that account might be unhappy for the rest of his days.

Cathrein expresses the matter thus:

"The duty of obedience in the children corresponds to parental authority. It extends only to things which concern education and household order. In the choice of a career the children are not bound by the orders of their parents, though it is usually a duty of prudence and charity to listen to their advice and reverence their lawful wishes. For the choice of a career does not pertain to the process of education, but supposes that this

process has been accomplished. Consequently the duty of obedience ceases for the children when they have finished their education and leave the family midst. The duties of honor and love on the contrary continue in force, for they are not dependent on the function of education, but arise necessarily from the interior relationship between parents and children.”¹

PRINCIPLES

1. No one can lawfully enter upon the marriage contract if his intelligence and moral character exclude the possibility of the proper care and education of children.

2. A person has no right to marry when he is suffering from a venereal disease.

3. One who has had syphilis should never marry without informing the partner to the marriage.

4. When it is known that one party to an intended marriage has had syphilis, the time of the marriage should be determined only after consultation with physicians selected by each individual concerned.

5. Parents have a duty to love and care for their children, providing for their physical, moral and religious well-being.

6. The moral and religious training of children demands of the parents an honest attempt to satisfy their own minds on the major problems which confront mankind, and therefore sincerely to adopt a religion or work out a philosophy of life.

7. Children who are left to flounder about and develop their own moral and religious principles are at a great disadvantage when they face prematurely any of life's many and serious trials.

8. The parent who does not give to the child a view of

¹ Victor Cathrein. *Moralphilosophie*. Freiburg im Breisgau: 1893. II, p. 392.

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life which has been honestly worked out fails to fulfill the terms of the marriage contract to care for and educate children.

9. As it is unreasonable and therefore wrong for a parent to refuse a child the opportunity of an education, it is likewise unreasonable and wrong for a child to neglect the opportunities afforded him by his parents.

10. In spite of many failings, parents do not lose their right to honor and respect from their children, and the children in spite of much untowardness do not forfeit their right to the love and protection of their parents.

11. A child owes his parents love and respect throughout all his life.

12. A child does not owe his parents obedience throughout all his life.

13. The parents' right to obedience ends when they have equipped the child for his career in life, and they have no right to demand that a child enter this or not enter that honorable career.

14. As long as a child remains in the home he has a duty to submit to the regulations made for the good order of the household.

PROBLEMS FOR DISCUSSION

A fair number of the nurses (9.4 per cent.) who kept the diaries which constituted the starting point of this study of ethical problems were still concerned with difficulties arising out of child-parent relationship. Analyze the following problems in the light of the previous discussion.

1. The father of a nurse deserted her mother and her three small children some fifteen years ago. When the nurse was twelve years of age her mother died. After the nurse had graduated her father became ill and sent for his daughter the nurse. She, thinking of the state of his soul as well

as that of his body, went to visit him. He recovered and then seemed to forget all about his daughter the nurse, neither writing to her nor asking any questions concerning her. The nurse sent her sister money to help provide for her father. Finally the sister married and left the entire support of the father on the nurse. What was the nurse's duty? ¹

2. Nurse dating without her parents' consent but because she is away where they do not see her, she takes advantage and goes. Being twenty years of age, should she explain to her parents she wants to be sociable in a clean way with friends of opposite sex or should she "cheat" on her parents?

3. I told my family I would be home this afternoon. I just got word from a fellow whom I have always wanted to go out with that he will come here to meet me this evening. I don't know whether I should wait and go out with him or disappoint my family.

4. Is it permissible for a girl to room away from home because if she remains at home she would have to support her parents? The outdoor relief fund requires those who earn to support those who are unemployed.

5. What can a student nurse do in the situation of being forced into the profession by her parents?

¹ This problem brings out a twofold relationship between parent and child:

(a) The parent first cares for the child and therefore it is right and fitting that the child should later care for the parent, simply because the parent has made so many and such great sacrifices for the child.

(b) The parent is a human being and the child is a human being; when one human being meets another in great distress it becomes a duty of charity to help that other being. Even though in the past the one in distress has done the one who meets him serious injury, he does not for all that forfeit the right of a human being to receive help when in great distress from another human being. But in the above case the one in distress is the father of the nurse who can help him. He has forfeited his right from the point of view of justice, but the appeal of charity remains. It would seem that the parent-child relationship has in it elements both of charity and of justice. For the dispute as to whether or not there are mutual duties of justice between parent and child, see Cathrein, *op. cit.*

B. THE STATE

CHAPTER 20

CIVIL AUTHORITY

Origin of the State. Aristotle, who was more than two thousand years closer to the beginnings of the social order than we are today, conceived of the state as having its historical origin in the family. Marriage he points out as necessary for the propagation of the human race and out of marriage arises the family. Families living together and organizing their activities for their common good constitute a village. He then goes on to point out that the most natural type of village is that of a group of families united to each other by bonds of blood relationship.

“And the most natural form of the village appears to be that of a colony from the family, composed of the children and grandchildren, who are said to be ‘suckled with the same milk.’ ”¹

Maine attempted to examine the origin of the state by a study of archaic law and came to the conclusion that the most primitive type of state is that of a group of families united by ties of blood relationship. Later on regional contiguity led to a community of interests and that along with community of language developed the state in the modern sense.

Archaic law, says Maine,

¹ *Politica* I, ii. 1252^b. Translation by Benjamin Jowett. Oxford: 1921.

"is full, in all its provinces, of the clearest indications that society in primitive times was not what it is assumed to be at present, a collection of *individuals*. In fact, and in the view of the men who composed it, it was an *aggregation of families*. . . .¹

"The Family then is the type of an archaic society in all the modifications which it was capable of assuming; but the family here spoken of is not exactly the family as understood by a modern. In order to reach the ancient conception we must give to our modern ideas an important extension and an important limitation. We must look on the family as constantly enlarged by the absorption of strangers within its circle, and we must try to regard the fiction of adoption as so closely simulating the reality of kinship that neither law nor opinion makes the slightest difference between a real and an adoptive connection."²

But as Cronin has pointed out, although this is the ordinary way in which states have developed, some owe their origin to groups of individuals unrelated by ties of kinship who have in some cases organized themselves and constituted themselves into a state.³

The Function of the State. One can get the best idea of the function of the state from the concept of its origin. When an ever-increasing number of people live together, hunting in the same forests, pasturing their flocks in the same fields, tilling and cultivating the open spaces of one and the same region, there necessarily results a manifold conflict of interests. In order that all may go smoothly some kind of organization must be undertaken. Furthermore, the entire region will at times be threatened by in-

¹ Henry Sumner Maine. *Ancient Law*. New York: 1888. P. 121.

² Maine, *op. cit.*, p. 128.

³ Rev. Michael Cronin. *The Science of Ethics*. 1917. Vol. II, p. 465.

vasion from without and in order to resist this its inhabitants must act together under competent leadership.

The most natural leadership in a region where the people consist largely of interrelated families is that of the head of the family. His leadership is a paternal care of all the members of his large and extensive family based on the love of a father for his children. He limits the selfishness of one child to protect the rights of another. He labors for the welfare of all because of the love he has for each. No one is oppressed but all are protected. This ideal, all too seldom realized, of a father's care for his children is the prototype and model of all government. Where states were founded by a union of non-related families the government established had nevertheless one and the same function: the adjustment of internal conflicts, the organized development of the region inhabited and those who dwelt therein, and the protection of all from unjust aggression whether from within or without the confines of the state.

And even in our day when states have grown to such enormous proportions the paternal ideal of government remains the only one that harmonizes with the dignity of human nature.

One who pushes himself into a place of authority, for his own aggrandizement and with no intention of working for the welfare of those he governs, is acting contrary to right reason and is therefore committing a sin.

One who uses a place of authority to oppress others is guilty also of the crime of injustice against his fellow men.

Right government can know no favoritism. All rights must be protected and all individuals given an opportunity to enjoy life, liberty and the pursuit of true happiness. If any individual or group of individuals pursue their selfish aims to the detriment of others they must be checked by state authority; but although they may be punished by a

limit set to selfishness, they cannot be destroyed or oppressed. All classes and all men have inalienable rights and in that sense equal rights to life, liberty and the pursuit of true happiness.

The opposite of this doctrine is that proposed by Lenin in the preliminary draft he wrote on *The Dictatorship of the Proletariat*.

"The dictatorship of the proletariat is the continuation of the proletarian class war in novel forms. This is the decisive point which is not understood. The proletariat as a distinctive class continues by itself its class war.

"The state is simply the weapon with which the proletariat wages its class war. *A special sort of bludgeon, nothing more.*"¹

The recent treatment administered to the Jews in Germany is only an example of class war.

But all class war, whether by the state or otherwise, is immoral, for the function of the state is not to carry on class war but to prevent it, and every man has a duty to honor and respect every other man. No state is supreme master of men and no individual or group of individuals has any right to destroy the life or happiness of any other individual and all such attempts are inherently iniquitous.

State Authority Is from God. Since large numbers of men cannot live together in a community without some kind of government, it is clearly evident that government of one form or another is necessary to humanity. God, as the first Cause of all things, must will that which is necessary to the existence of what He has brought into being. God wills, therefore, the establishment of states because He wills

¹ Waldemar Gurian. *Bolshevism: Theory and Practice*. London: 1932. P. 300. By permission of Sheed and Ward, London.

the existence of men and their growth and development to the perfection of manhood. When, therefore, the state lays down laws for the true welfare of society, these laws bind in conscience because they give expression to the will of God directing all things to the attainment of their perfection.¹ This does not mean that the source of all morality is the Divine Will to which all moral codes are intrinsically indifferent. From our human point of view the Divine Nature is prior to the Divine Will and God wills human perfection only because it is a copy, faint though it be, of His own Divine Perfection and hence the fundamental laws of morality are eternal and immutable and could not be other than they are.

God's will, therefore, ordaining the perfection of man and the social order, is the source of all civil authority. Class war is immoral, for it tends to the destruction of charity in those who wage it and to the unhappiness and degradation of those against whom it is waged. Because each man is in some manner an image of God, reason dictates that we love every man in so far as he is like unto God. If a man falls short of the expression of Divinity to which he might attain it is not for us to destroy the little that remains but do what we can to bring it to fuller expression.

All state laws which may be shown to tend to the true perfection of individuals and society are binding

(a) proximately because they further human happiness and perfection;

(b) ultimately because they have been produced by God Who wills human happiness and perfection because of His own happiness and perfection.

The Duties of the State. From these considerations the duties of the state will be at once apparent. All government is for the welfare of the governed. The people do not exist

¹ Cf. also p. 13.

in order to support a government. Governmental officials are truly servants of the people. Even the Holy Father is the *servus servorum Dei*, the servant of the servants of God.

The primary concern of any state is the interior development of the country in the widest sense of the word. It is for the state to provide in abundance and perfection those goods which individuals or families could supply only inadequately. These goods may be embraced under the headings physical, intellectual and moral.

Such problems as sanitation in cities, or road-building throughout the land, could never be cared for by individuals or families and yet these matters must be taken care of if the citizens of the country are to live in safety and develop to the limit of their capacity.

The state has a duty to protect the morals of the public by the restraint of evil-doers and by appropriate legislation.

The state must also provide for the education of youth, but the particular form of education is a matter to be decided by the family. The state has a duty to assist the family but the rights of the family are higher than the rights of the state, for the state exists for the benefit of the family and not the family for the benefit of the state.¹

The state has no right to dictate the religion of its subjects, for religion must be a matter of interior moral obligation which the state is powerless to dictate. And here too the personal rights of the individual are higher than the rights of state, for the state exists to protect these rights and the individual is not a mere tool of the state.

The Bestowal of Civil Authority. In the early history of mankind the head of the family had a certain inherent right in virtue of his position to regulate the affairs of all those who belonged to his family by blood relationship or whom he had adopted into it and given the privileges of his

¹ Cf. *Infra* Chapter 21.

children. If history had been the gradual development of a family preserving its unity and a definite line of succession in the heads of the human race, one might say that this line of succession was established by God and that human beings had no voice in the selection of their rulers. But no such condition of affairs exists. Mankind is split up into races and nations. In any one nation dynasties have come and gone, revolution has followed upon revolution and there is no possibility of tracing any line of succession to its ultimate origins. Again and again in one way or another the people have set up their government and their rulers, and in many historical crises only by some such form of selection has it been possible to establish a stable government. It would seem, therefore, that the phrase, *the divine right of kings*, is true in so far as it means that those who rule, rule by the authority of God but not in the sense that God Himself, independent of human agencies, selects the rulers.

History demonstrates that in general rulers are chosen by the people and not by God, as when Samuel was told to anoint Saul King of Israel.

Saint Robert Bellarmine (1542-1621) maintains that political power is ordained by God but that it is bestowed upon individuals by the people.¹ He thus writes:

“This power resides, as in its subject, immediately in the whole state, for this power is by Divine law, but Divine law gives this power to no particular man, there-

¹ Gaillard Hunt writes in the *Catholic Historical Review*, 1917, 3 (Virginia Declaration of Rights and Cardinal Bellarmine, pp. 276-289): “Were Mason and Jefferson conscious of their debt to Bellarmine, or did they use Filmer’s presentation of his doctrine without knowing that they were doing so? Did the Americans realize that they were staking their lives, their fortunes and their sacred honor in support of a theory of government which had come down to them as announced by a Catholic priest? We cannot answer these questions, but it should be a satisfaction for Catholics to know that the fundamental pronouncements upon which was built the greatest of modern revolutions, found their best support in the writings of a Prince of the Church.”

fore Divine law gives this power to the collected body. Furthermore, in the absence of positive law, there is no good reason why, in a multitude of equals, one rather than another should dominate. Therefore, power belongs to the collected body.

"By the same natural law this power is delegated by the multitude to one or several, for the State cannot of itself exercise this power, therefore, it is held to delegate it to some individual or to several, and this authority of rulers considered thus in general is both by natural law and by Divine law, nor could the human race assembled together decree the opposite, that is, that there should be neither rulers nor leaders.

"Note . . . that individual forms of government in specific instances derive from the law of nations, not from the natural law, for, as is evident, it depends on the consent of the people to decide whether kings, or consuls, or other magistrates are to be established in authority over them; and, if there be legitimate cause, the people can change a kingdom into an aristocracy, or an aristocracy into a democracy, and vice versa, as we read was done in Rome."¹

Louis Cardinal Billot holds the same views.

"In any case," says the Cardinal, "forms of government and titles to exercise power, and power itself, as existing in its determinate possessors, are not immediately from God, but only through the medium of human consent, that is, the consent of the community."²

¹ *De Laicis* or the Treatise on Civil Government by Robert Bellarmine. Translated by Kathleen E. Murphy. New York: Fordham University Press, 1928. Pp. 25-27.

² The Moral Origin of Civil Authority, being a free translation from Propositions III and IV, Section 1, Question 12, Chapter 3, *De Ecclesia Christi*, in: *Readings in Ethics* compiled and edited by Jane Frances Leibell. Chicago: Loyola University Press, 1926. P. 900. This is a very excellent source book on ethics.

Billot points out that it does not follow

“that one government can be deposed and another instantly substituted at the whim of the multitude. . . . A will which does not follow the order of reason neither has nor can have validity. . . .

“The right of sovereignty is unlike the right of property, inasmuch as it is by nature ordained not for the benefit of him who holds it, but for the benefit of society. Hence if at any time the public good requires a new form of government and a new designation of rulers, no preëxisting right of any person or any family can validly prohibit this change. The right to create the new legitimate government inheres in the community habitually or potentially. However, it ought not to be used rashly and whimsically, but only when its use is demanded by the common good and social tranquillity.”¹

This of course is no justification of revolution in general nor a denial of the fact of the grave injustices that have been wrought by many revolutions in particular.

But how are we to determine when the demand for a new government is verified? Billot says:

“For answer we do not need to go far away, nor to take refuge in metaphysics. The necessity of constituting a new government exists whenever the preceding government has been destroyed, and there has been introduced a new government which cannot be abolished without detriment to peace. In such a situation the new government is legitimate, even though the preceding one was destroyed by iniquitous rebellion, for the only pertinent question concerns what is here and now required

¹ *Op. cit.*, p. 903.

by the supreme law of the common good. By this supreme criterion it is evident that the community has the same right to constitute a new sovereignty as it had at the beginning of its political existence. Generally speaking, every civil government is to be held legitimate from the moment when it has been constituted and accepted and regularly exercised."¹

And we might add that from that time on the just laws of the new government concerning the civil welfare are binding in conscience on those citizens who live in the jurisdiction of the government.²

Sterilization of Undesirables. The state has no absolute right over its subjects. The subjects are not the property of the king, nor are the citizens things that may be disposed of at will by civil authority. For, as we have pointed out above, all state authority is for the welfare of the governed.

It, therefore, follows that civil authority cannot kill, mutilate or in any way injure its innocent subjects. The state has a right to punish offenses if only to deter evil-doers and so put a stop to crime. Imprisonment and capital punishment for serious crime are justifiable on the grounds of removing from society one who has proved himself inimical to society by taking away the life of one of its members; and because the state has a right and a duty to punish those who transgress the law.

In recent times it is maintained that the state has a right to sterilize the feeble-minded for fear lest their children should be feeble-minded and so an increased burden be thrown upon the state. If a feeble-minded person were guilty of criminal acts and sterilization regarded as a pun-

¹ *Op. cit.*, pp. 903-904.

² No one will confound the view of Bellarmine and Billot with the social contract theory of Hobbes, who derives morality itself from the contract. For an adverse criticism of Bellarmine (and Suarez) see: Cronin, *op. cit.*, pp. 501-503.

ishment for crime, a law imposing it on criminals might be theoretically justifiable, though many questions might be raised as to its efficacy.

But if one admits the principle that the state has a right to mutilate those whom it regards as potentially dangerous, it will be hard in the long run to prevent ultimate conclusions of an extreme character. Grant the right of the state to mutilate undesirables and it will be difficult to say that the state has no right to take away the life of undesirables. Grant the state the right to take away the life of those whom it regards as potentially dangerous and it will be difficult to limit the concept of the undesirable to those who are mentally deficient and then we would be back to the despotism which progress has been banishing from governments for centuries.

The idea of sterilizing the feeble-minded has been advocated on the ground of expediency. It has been held that feeble-mindedness is inherited as a Mendelian unit recessive ¹ and that, therefore, it could be stamped out by sterilizing all those who manifested it. But low grade mentality is no more a unit character than low stature, and we could no more eliminate it, by sterilizing a few thousand morons, than we could make all those of the next generation tall by locking up or sterilizing a few thousand short men.

Expediency is after all an unsafe guide. Whenever we look at the expedient without regard to justice and charity, we may expect in the long run to find out that our course of action was most inexpedient. The sterilization movement had a poor scientific foundation and has been responsible for the neglect of the just and kindly treatment of the mental defective in which alone can be found the true solution of the problem.

¹ Henry H. Goddard. *Feeble-mindedness: Its Causes and Consequences*. New York: 1914. Pp. xii + 599.

Duties of the Individual to the State. Between the individual and the state there are reciprocal obligations. We have already outlined the duties of the state to the individual and the family. We may now mention some of the duties of the individual to the state.

In the first place the individual owes the state, as he does the family or any organization to which he belongs, the duty of being an honor and a credit to the body politic by the example of a life resplendent with all the virtues. This is particularly the case when an individual travels abroad. A drunken, disreputable citizen dwelling in foreign lands casts a smirch on all his fellow countrymen.

A citizen owes his state the payment of the taxes which have been imposed. Any attempt to evade them, to make dishonest returns in one's income tax report, is an immoral act.

A citizen who has the privilege of voting has a duty to study important issues in order that he may cast his vote in an intelligent manner. To stay away from the polls or vote unintelligently on important issues, though not grievously wrong, nevertheless partakes of the character of an immoral act. Those who cannot understand issues should consult one who can be trusted.

A citizen owes his state support in time of war and, if need be, must lay down his life for his country. The judgment as to whether or not war is to be declared must rest with those in authority. In general a citizen should so far acquiesce in the judgment of the government as to place his financial aid and personal services at the disposal of the government. Two sides can generally be made out for any declaration of war. It is precisely the function of the state to decide in such matters of civil importance. Once this decision has been made, the citizen stands by his government and lays aside his personal opinion. Only in very rare cases

can one be so certain of his own opinion that he can say: "The government is wrong and I am right. The war is unjust and I cannot bear arms in an unjust war." If he feels certain that the war is unjust he must decline to bear arms, but he cannot refuse to offer his services in caring for the sick and wounded.

Since this is precisely the function of a nurse, she never raises the question of just or unjust in time of war, but places her services at once at the disposal of the government.

PRINCIPLES

1. The historical origin of the state is to be traced to the family.

2. The function of the state is the development and protection of the individual and the family.

3. In the well-organized state all rights must be protected and all individuals given an opportunity to enjoy life, liberty and the pursuit of true happiness.

4. Class war, whether undertaken by the state or individuals, is immoral.

5. All government is for the welfare of the governed.

6. God's will, ordaining the perfection of man and the social order, is the source of civil authority.

7. Divine law gives political power to no particular man, but to the collected body of individuals who constitute a state; and this collected body delegates to one or a number the right to exercise civil authority. (Bellarmine.)

8. The state has no absolute right over the bodies and lives of its subjects.

9. A citizen who has done no wrong may not be mutilated nor put to death by civil authority.

10. A citizen owes to the state the duty of being, to the best of his ability, an honor and a credit to the body politic.

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11. A citizen owes his state the payment of taxes which have been justly imposed. Any attempt to evade this duty by dishonest returns is an immoral act.

12. A citizen, who has the privilege of voting, has a duty to study important issues that he may cast his vote in an intelligent manner. Those who cannot understand issues should consult one who can be trusted.

13. A citizen owes his state support in time of war, and, if need be, must sacrifice his possessions and lay down his life for his country.

CHAPTER 21

THE STATE AND THE FAMILY

State's Right Essentially Protective. The state has a right and a duty to protect the individuals who constitute it. It has no right over the lives of individuals. It can protect but it cannot destroy. When, as in punishment for crime, it takes the life of, or imprisons, an individual, it is exercising no supreme dominion over the lives of its subjects but is rather protecting them from further harm by one who is a danger to society and exercising its fundamental right to punish citizens who do wrong.

The state cannot lay down the laws and conditions of matrimony. A legislature cannot make marriage anything it pleases, for both the state and the individual are bound by the natural and Eternal Law.

The state cannot destroy and break up the family for its own ends. But the state can protect the child from the ignorance, the unreasonableness, or the cruelty of the parents.

This concept is expressed in the encyclical letter of Pius XI on the Christian Education of Youth.

“It also belongs to the State to protect the rights of the child itself when the parents are found wanting either physically or morally in this respect, whether by default, incapacity or misconduct, since, as has been shown, their right to educate is not an absolute and despotic one, but dependent on the natural and divine law, and therefore subject alike to the authority and jurisdiction of the Church, and to the vigilance and administrative care of the State in view of the common good.”¹

¹ Translation. National Catholic Welfare Conference: 1930. P. 17.

State's Right Secondary to Family's Right. The state's right to educate is secondary to that of the family because the state itself is secondary to the family. Families did not develop out of a state but states out of families. The end and purpose of the state is the preservation, protection and assistance of families and individuals. Destroy all individuals and families and there will be no more states; but should all states be destroyed by a universal anarchy, a new social order and new states might rise again for the better protection of individuals and families. The state, therefore, may protect the child and the family; it has no primary rights over children or over families. The rights of parents are higher than the rights of states. The state, therefore, has no right to take the child away from the parents and educate it as it pleases. Much less has the state a right to give the child an anti-religious education, for the state is subject to God and may not legislate so as to turn the individual away from the end ordained by God Whose will is the Eternal Law, the source and origin of all rights and obligations.

Church Recognizes Parents' Right to Select Religion of the Child. The parents have a duty, as we have said above, to work out their solution to the problems of religion and impart it to their children. If their solution is contrary to the doctrines of the Church, the Church respects their rights. The encyclical of His Holiness, Pope Pius XI, on the Christian Education of Youth calls special attention to this fundamental right of parents to educate their children according to their religious convictions.

"The Church is indeed conscious of her divine mission to all mankind, and of the obligation which all men have to practice the one true religion, and therefore she never tires of defending her right, and of re-

minding parents of their duty, to have all Catholic-born children baptized and brought up as Christians. On the other hand, so jealous is she of the family's inviolable right to educate the children, that she never consents, save under peculiar circumstances and with special cautions, to baptize the children of infidels, or provide for their education against the will of the parents, till such time as the children can choose for themselves and freely embrace the faith." (Codex Juris Canonici. 750 § 2. St. Thomas. Summa Theologica. 2. 2. Q. X, xii.)¹

Primary Rights of Parents in Education of Child. The United States Supreme Court has recognized the primary rights of the parents in the education of the child, maintaining that this concept is basic to the American concept of freedom.

"The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." (P. 535.)²

Parents' Right Not Absolute. But, while this is true, parents cannot do anything they please with their children. They have no right over the life of the child and are bound to provide for its physical, moral and religious welfare. If they seriously neglect these duties the state may interfere with their mismanagement of the child.

If the welfare of the child demands vaccination against

¹ Op. cit., p. 15.

² Pierce, Governor of Oregon, et al. v. Society of Sisters. 268 U.S. 510.

smallpox or a medical or surgical procedure, whose omission would seriously endanger the life or welfare of the child, and the parents refuse, the state can step in and order the carrying out of measures refused by the parents. In general, the simpler the medical or surgical treatment and the graver the consequences of its neglect, the more easily may it be demanded or forced by the state.

If the parents do not give proper physical care the state can help them to provide it, but if it is refused or not properly administered, the state may remove the child and place it where it will receive proper care and attention.

If the parents lead an immoral life or endanger the moral welfare of the child, the state has a right to protect the morals of the child against the immorality of the parents.

That extreme measures should be taken and homes broken up by the removal of the children, there must be clear evidence of grave neglect; for parents have a right to their children and do not forfeit it unless their mode of handling the children gravely endangers their physical or moral welfare.

PRINCIPLES

1. The state has a right and a duty to protect the individual and the family.
2. The state cannot destroy and break up the family for its own ends.
3. The state can protect the child from the ignorance, the unreasonableness or the cruelty of the parents.
4. The state's right to educate is secondary to that of the family.
5. The state has no right to take the child away from the parents and educate him as it pleases.
6. The parents have a duty to work out their solution to the problems of religion and impart it to their children.
7. If the parents do not take proper care of the physical

and moral welfare of the child, or seriously neglect the child's education, the state has a right and a duty to protect the child against the delinquency of the parents and may, when necessary, remove the child from the parents by whom it has been neglected.

PROBLEMS FOR DISCUSSION

1. A child is suffering from a malignant tumor which will mean certain death for the child if it is not removed by a surgical operation. The parents refuse to allow the surgical operation. Social workers bring the case into court and ask the judge to order the child's temporary removal from the parents so that the operation may be performed. What moral principles are involved?

2. A mother works all day and allows her two daughters, fifteen and seventeen years of age, free liberty until she returns at night. The neighbors complain of noisy afternoon parties of boys and girls in the apartment, but the mother refuses to take any steps to control the situation. The Associated Charities finally demand that the girls be removed from the custody of the mother. Discuss the moral issues involved.

3. A mother, whose husband is dead, is working hard to support four children whose ages range from two to eight. She is unable to make enough money to feed and clothe them properly. Neighbors allow the smaller children to play with their children during her absence, and older children bring the six- and eight-year-old boys home from school. The apartment is neat and clean and the main difficulty is the inadequate supply of food and clothing. The mother wants to keep all her family together, but some argue that she should not be allowed to keep children she cannot support. Discuss her rights and duties and those of the community in her regard.

C. THE PROFESSION

CHAPTER 22

PROFESSIONAL DUTIES ¹

The Concept of a Profession. We may turn to Murray's New English Dictionary for a history of the meaning of the word profession in the sense of a calling or walk in life. We find there the following outline of the meaning the word has had in the history of the English language.

"The occupation which one professes to be skilled in and to follow. *a.* A vocation in which a professed knowledge of some department of learning or science is used in its application to the affairs of others or in the practice of an art founded upon it. Applied *spec.* to the three learned professions of divinity, law, and medicine; also to the military profession. . . . *b.* In wider sense: Any calling or occupation by which a person habitually earns his living." ²

It is the narrower sense with which we are concerned when we speak of professional duties.

The supreme court of Iowa, after quoting the definition of the word profession in various dictionaries, thus summarizes the concept.

"It is apparent from these definitions that, to constitute a profession, something more than a mere em-

¹ Since the nursing profession has not yet officially adopted a code of ethics, this chapter is mainly concerned with the ethical code of the American Medical Association.

² Definition in Murray's Oxford English Dictionary. Oxford University Press.

ployment or vocation is essential; the employment or vocation must be such as exacts the use or application of special learning or attainments of some kind, and this seems to be the conclusion of the court. Thus a chemist is a person belonging to a recognized profession. (United States *v.* Laws 163 U. S. 258.)”¹

The decision then goes on to enumerate various occupations which are and are not professions. A consulting engineer belongs to a profession. A building contractor, a milliner, one who operates a real estate agency, a commission agent, any agent for the sale of any particular kind of property, a sewing-machine agent, etc., have all been declared in legal decisions to be not engaged in professional work.

There are thus two elements in the concept of a profession :

(a) the necessity of the one who exercises a profession possessing “special learning or attainments of some kind.”

(b) the application of this knowledge in a practical way “to the affairs of others.”

One who practices a profession has, therefore, the two-fold duty

(a) of adequate knowledge,

(b) of utilizing this knowledge in such a way as to serve the best interests of those he undertakes to aid.

Morality as a Professional Duty. A member of a profession is essentially one individual in a group that is more or less marked off from other men in public opinion and bound together by its own regulations and social organization. It is a matter of very great importance to any group to have the respect and confidence of the public, and anything which tends to lower this respect and destroy this confidence

¹ *Cummings v. Pennsylvania F. Ins. Co.* 37 L.R.A. (N.S.) 1175.

is an injury to all the members of the profession. A member of a profession cannot say, My personal life is a matter that concerns me entirely and no one else, for whenever any one member of a profession by the immorality of his life brings himself into contempt, the public will say, reasonably or unreasonably: And so this is a doctor or a lawyer or a nurse or a clergyman. All upright members of a profession have a feeling of shame when one of their members, especially if he belongs to their own local society, falls into disgrace by some kind of immoral or even ungentlemanly conduct. And on the contrary all the members of the profession rejoice in the noble deeds of any one of their fellow members.

The mere entering upon a profession, therefore, entails an obligation of maintaining the honor and dignity of the profession. This is well expressed in the *Principles of Medical Ethics* of the American Medical Association.

“The obligation assumed on entering the profession requires the physician to comport himself as a gentleman and demands that he use every honorable means to uphold the dignity and honor of his vocation, to exalt its standards and to extend its sphere of usefulness.”¹

The Profession and the Service of Humanity. Every man's life should be something more than the pursuit of selfish personal ends. Everyone should in some measure within the small sphere of his influence serve humanity to the fullest extent of his powers. If this is true of every man it is still more true of the professional man who places his special knowledge and acquisitions at the service of others. It is perfectly true in the profession as elsewhere that the laborer is worthy of his hire, and one who cannot make his own living cannot long be of service to anyone else. Conse-

¹ Ch. III, Article i, Sec. 1.

quently every member of a profession has a fundamental duty to support himself.

There has, however, been a tradition in the three major professions, the sacred ministry, medicine and the law, that

“a profession has for its prime object the service it can render humanity; reward or financial gain should be a subordinate consideration.”¹

No one doubts this in regard to the priesthood. The *Principles of Medical Ethics* of the American Medical Association makes it a characteristic of professions in general of which medicine is only one special form.

In the oath recommended by the American Bar Association we find the words:

“I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man’s cause for lucre or malice.”²

The principle which lies back of this element in the lawyer’s oath is the general truth that a profession is primarily a service of humanity.

In this, a profession differs from business as it *de facto* is. Business seeks primarily the financial welfare of the one who engages in it. A profession seeks primarily the welfare of humanity. Business should also be primarily a service of humanity, just as every man’s life should look to the true welfare of those about him rather than to his own financial gain.

Because a profession is primarily a service of humanity, any member of a profession who refuses to make personal sacrifices for the welfare of others is guilty of unprofessional conduct. To serve the rich and neglect entirely the

¹ Principles of Medical Ethics. Ch. I, Sec. 1.

² Report of the Fifty-fifth Annual Meeting of the American Bar Association. Baltimore: 1932. P. 856.

poor is unethical conduct on the part of any member of any profession.

Advertising and Solicitation. All attempts to advertise oneself and solicit patients or clients by circulars or otherwise is evidently unprofessional conduct. It makes the profession a business venture, an attempt to get money.

(a) It is a violation of a tacit contract to lead a professional career and therefore an injustice to the others who remain faithful to the obligations they assumed on entering the profession.

(b) It tends to undermine the dignity of the profession. If all its members did this they would be likely to become a mere set of money grabbers with no care for the poor and unfortunate.

(c) It is foolish, for it proclaims to all the world that the advertiser is not good enough to secure patronage on his own merits.

Patents and Secret Remedies. Because a profession is primarily a service of humanity it is unethical for a physician to patent any medicine or surgical instrument he may have invented. It would be still more unethical for him to discover a remedy and keep it a secret from the rest of the profession.

Contract Practice. Cabot¹ points out that contract practice meant originally the services of a physician to the members of a lodge. A lodge or fraternal order made a contract with a doctor to pay him a certain regular sum out of the fees of its members and the physician agreed to attend any member of the society whenever called upon to do so.

The result was that for a relatively small sum a physician agreed to take care of more patients than one man could possibly attend to, and give efficient medical care.

¹ *Adventures on the Borderlands of Ethics*. New York: 1926. Pp. 45 f. By permission of Harper and Brothers, publishers.

Of this type of medical practice Cabot says:

"It encourages disgracefully low standards of medical work, hurried botched examinations, guesses at diagnosis, treatment that is a wretched farce."

Evidently such practice is in itself immoral, independent of any professional code; for no one can agree with a clear conscience to give medical care on which a human life will often depend, unless he will be in a position to devote that careful and serious attention which is a matter of grave moral obligation on every physician.

Industrial Medicine. But of recent years there has developed what is known as industrial medicine. Large commercial organizations, not out of humanitarian but pure business motives, have instituted free medical care for their employees.

As an example of the magnitude and proportion which medical care can take on in a large industrial center we may cite the following.

The Endicott-Johnson Corporation in the state of New York employed in 1928 some 15,230 workers.

"All the medical care—including a wide variety of diagnostic and therapeutic services—is available and without charge to Endicott-Johnson workers and their immediate dependents. Free medical care includes physical therapy, x-ray therapy, heliotherapy, and the services of a psychologist for patients who are not overtly psychotic. In families crippled by the illness of the homemaker and financially unable to meet the issues created by such a situation, a 'helper' is sometimes provided to carry on domestic activities and to assist in the care of the patient.

"Dental work, which is also free, consists of simple repair, extraction, and hygiene."¹

The cost of this medical care to the company is some \$900,000 per year, which of course could not be maintained unless the health of the employees meant a financial return to the company that in some measure compensated them for such a vast expenditure. It would seem that the old idea of the paternal relationship between master and servant had not only a basis in obligations of charity but also a reward from the point of view of utility. This is only one example of how the good in the long run not only is right in the abstract, but pays in the concrete.

A physician engaged in industrial medicine contracts to give medical or surgical attention in emergencies as they arise and may also carry on a campaign of hygiene and general instruction to the employees in the prevention of industrial accidents, occupational poisoning and even in matters that may concern private life outside the place of work. The industrial physician is well paid and gives efficient service. Furthermore he is serving the welfare of humanity in the special field of his labors.

There can as a rule be no objection raised to his practice on the ground of contracting to do more than he can efficiently accomplish.

Can one object to his activities because he deprives private physicians of the fees they would earn if he were not in existence? As Cabot points out:

"If the store physician or factory physician had not existed, some family physician would have earned a fee for attending to the injury. It is the same with the

¹ Niles Carpenter. *Medical Care for 15,000 Workers and Their Families*. Committee on the Costs of Medical Care. Abstract of Publication No. 5. Washington: 1930. P. 7.

various 'medical emergencies,' such as 'fainting fits,' headaches, colds, cramps, etc., which are usually attended to at the plant. Some private physician loses a fee in many such cases."¹

Cabot does not by any means raise this as an objection to contract practice, but the idea is ever cropping up in discussions in this field. The argument should never be raised by one who realizes what is meant by the concept of medicine as a profession.

"A profession has for its prime object the service it can render to humanity; reward or financial gain should be a subordinate consideration."²

The first question to be raised, therefore, is whether or not the activities of the industrial physician are a genuine service to humanity. If so they are not to be restricted. Medical societies must not descend to the level of some trade unions and corporations and try to throttle everything that seems to limit the financial gain of their members.

Commercial Organization of Medical Advice. As far as industrial medicine is concerned the situation is accepted and the American Medical Association has been waging no war on industrial medicine.

But there has developed another type of contract practice. A commercial organization employs physicians and establishes an institute. It tries to secure healthy "patients" and undertakes periodic physical examinations with the various necessary laboratory tests, all with the idea of detecting latent disorders which may be corrected if the patient will follow the advice given and so many lives may be prolonged. Because it works with large groups such a concern can

¹Op. cit., p. 47.

²Principles of Medical Ethics of the American Medical Association. Ch. I, Sec. 1.

provide this medical prophylactic care much more cheaply than the private physician.

Are the doctors who contract with such a concern to perform the physical examinations and give the laboratory tests false to the ethical standards of the profession?

The first question to be answered is this: Is the work of such an institute a service to humanity? It seems that it is. The Metropolitan Life Insurance Company had a number of its policyholders take periodic examinations at the expense of the company. After five or six years they took stock so as to find out what had become of the first 6,000 policyholders who had undergone their periodic examinations.

"When in 1920, we closed our books, as it were, and made our accounting, we found that a total of 217 of these originally examined persons had died. As a matter of fact, we had expected 303 of them to die in the same period. In other words, the group as a whole gave a mortality of 72 per cent. of the expected. There was, therefore, a saving of 28 per cent. on the mortality, according to the American Men Table, which approximates the experience of most Ordinary companies."¹

Four years later there was practically no change as compared with the preceding five.

One cannot attack the work therefore on humanitarian grounds, but must rather commend it. There are, however, other possibilities to be taken into consideration.

What might be of immediate humanitarian value might eventually develop into a detriment. If unscrupulous indi-

¹ Augustus S. Knight. The Value of Periodic Examinations of Life Insurance Policyholders. A paper read before the Philadelphia County Medical Society, Philadelphia, Pa., Nov. 12, 1924. Published by Metropolitan Life Insurance Company, p. 5. See also: Louis J. Dublin. Old age: what it means to the community. (Reprint) Bull. of the N. Y. Academy of Medicine. Second Series. 1928, 4, p. 1084

viduals organized corporations for medical examinations and advice, for the sake of making money, inadequate examinations might be made and improper advice given. It is on this account that a general opinion cannot be given on work of this nature. All such institutions should have their work open to proper medical inspection at any time. If a physician wishes to engage in such work and gives proper attention to his duties he cannot be looked upon as doing anything immoral; but he may have to live under the suspicion of his fellow physicians until the atmosphere has cleared as it has done in the case of industrial medicine.

If an institution for periodic medical examinations has proved itself of value in lengthening human life, it has humanitarian value. What has demonstrated its value must not be condemned because it may become a source of harm. But when that possibility has been recognized the further development of such institutions must be carefully watched and every precaution taken that the good does not degenerate into an evil.¹

Changing Principles of Medical Ethics. Medical practice is in a process of change and because of the changing conditions many of the sound practices of yesterday will be frowned upon tomorrow. Lewellys Barker says:

“Social conditions are constantly changing and . . . moralities and immoralities (inclusive of the medical) ought to be undergoing corresponding change.”²

One should rather say that because of changing conditions what appears to be the same is no longer the same. Principles, therefore, which formerly governed things as they

¹ For a critique of the situation see: William Allen Pusey. Some tendencies in the business of the practice of medicine. *J. of the Amer. Med. Assoc.*, 1928, 90, 1897-1902.

² Lewellys Barker. Changes in medical ethics concomitant with changes in social conditions. *International Clinics*, 1930, 3, 40, s., p. 226.

were no longer govern things as they *are*. As Morris Fishbein says:

“With the coming of group practice, of hospital practice, of industrial practice, of factory practice, of the practice of medicine by corporations of physicians, of the practice of medicine by corporations of laymen who hire physicians on salaries, of the practice of medicine by insurance companies, of the practice of medicine by perhaps twenty-five different types of organizations that have entered the medical field, a new situation confronts us in which the old rules of etiquette and custom cannot apply. The old ideals and the morals and the old principles of fundamental human relationships will always apply. But in this new situation with clinics and with hospitals, principles must be elaborated, the situation as it is today must be studied, and rules and customs modified to meet changing social conditions.”¹

PRINCIPLES

1. A profession implies special learning or attainments of some kind and an application of this knowledge in a practical way to the affairs of others.
2. One who practices a profession has, therefore, the two-fold duty of adequate knowledge and of utilizing this knowledge in such a way as to serve the best interests of those he undertakes to aid.
3. Mere entering on a profession entails the obligation of maintaining the honor and dignity of the profession by moral uprightness of life.
4. “A profession has for its prime object the service it

¹ Morris Fishbein. Medical ethics and medical care. J. Tenn. Med. Assoc., Nashville, 1930, 23, p. 368.

can render to humanity; reward or financial gain should be a subordinate consideration."

5. All attempts to advertise oneself and solicit patients or clients by circulars or otherwise is unprofessional conduct.

6. Because a profession is primarily a service of humanity, it is unethical for a physician to patent any medicine or surgical instrument he may have invented or keep secret a remedy he may have discovered.

7. The relations of physicians to industrial organizations, clinics and hospitals are at present in such a state of flux and development that the ethical character of contract practice must be judged by the particular circumstances and conditions of each individual contract.

8. Industrial medicine in general seems to be a service to humanity and in accord with the high ethical standards of the medical profession.

PART FIVE

RELIGION AND MORALITY

FUNDAMENTAL RELIGIOUS DUTIES

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PART FIVE

RELIGION AND MORALITY

CHAPTER 23

FUNDAMENTAL RELIGIOUS DUTIES

The Virtue of Religion. Every man has a duty to work out a philosophy of life in which he takes an honest attitude towards God and religion. For no man can live in the world without becoming aware of the problem of God and religion, and once aware of this problem he must realize, as an intelligent being, that he can direct his activities to this or that end, in accordance with religious ideals or away from them. A rational ordering of life entails some attitude towards the true end of human action and the problem of God.¹ Ethics does not enter formally into the problems of theodicy, but most people have come to fairly definite conclusions on its major questions before studying ethics.

Natural Religion. If we interrogate for a moment our own minds we will realize that honesty demands that we recognize God as the Supreme Ruler and Cause of causes, and ourselves as beings dependent on God; that God is supremely perfect and we are very imperfect; that God wills our perfection and sanctity and that we fall far short of the ideal of moral perfection; that God is Supreme Wisdom and that we have been utterly foolish; that God, the Infinite Intelligence, alone is capable of guiding and directing the universe and that we would only create disorder and dis-

¹ Cf. Chapter I.

turbance if we tried to do as we pleased without reference to God.

When one is thus plainly honest with oneself one adores God in the interior of his own mind. He gives to God what is due to God and so exercises an act of the virtue of religion.

But this internal adoration is not sufficient. We must be honest before our fellow men as well as in the sight of God. For we would certainly fail in our duty to God, Who is the Eternal Truth, if we adored God in the interior of our own minds but failed to profess sincerely our honest convictions when questioned by others or in some manner called upon to do so.

But even interior adoration of God with occasional acts of expressing honest convictions do not exhaust the duties of the virtue of religion. Man does not live in isolation by himself but is part of various social units, particularly the family and the nation. Man as an individual owes his service to God as the Supreme Intelligence in the universal social order. But the family and the nation as social elements in the universal social order owe God, as social units, a religious worship. In the present disturbed condition of society it is very difficult for a nation, as a nation, to give to God the service that is His due; but in these our United States there is on various occasions some kind of recognition of divine authority and the Supreme Court has done its duty in declaring that we are a religious people.¹

Revealed Religion. Furthermore it is the duty of every man to take some attitude towards positive revealed religion. It must be a very important matter if God Himself has revealed Himself to man and established a positive religion. That such a thing is possible follows at once from the Supreme Intelligence and Omnipotence of God; that it is likely is seen when we but consider the weakness of human

¹ See pages 20-23.

intelligence and our proneness to error. And then there is the fact of the Church, the one and only Catholic Church, which has existed down through the ages, as dynasties rose and fell and nations developed to the fullness of their power only to fade away to insignificance, while throughout all ages and all nations the Church has ever lived on, asserting her claim to be the pillar and ground of truth and her right to teach truths revealed by God and give a final decision on what is morally right and wrong. And now after nearly two thousand years of existence she still stands forth in the vigor of perennial youth, teaching faith and morals and the very same doctrines of faith and principles of morals that she has ever taught down through the ages. No man can seriously consider his moral and intellectual religious duties without taking some definite stand towards the Church of the ages. Religious indifference is a moral crime, for it is a neglect of the most sacred of duties, the duty of man to God. It is often also an attempt to blind one's mind to moral obligations of various kinds. One does not wish to think about God and religion lest one should be obliged to change one's manner of living. Such ignorance, however, does not take away nor diminish guilt, but adds the sin of dishonesty to that of the unreasonable conduct, in which it was made easier to indulge by blinding the mind to the consideration of the truth.

Religious Indifference. It is unreasonable and dishonest for one to say: "God and religion do not concern me. I have enough to do to earn a living." For God and religion must concern every intelligent being if truth concerns the intellect and right conduct the will.

It is shallow to say that all religions are true and one religion is as good as another. Every man must respect the honesty of other men's religious convictions and exercise charity to all no matter how much he may differ in religious

belief from anyone with whom he comes in contact. But no man can actually realize what he is saying and assert that all religious beliefs are true. If, for example, I am right in saying that the Scriptures were inspired by God, anyone who asserts the contradictory is wrong. We cannot both be right. There is no reason, however, for either of us to feel any personal animosity towards the other because of any difference in religious belief. In fact to do so would be an offense against charity.

Some really mean to assert only that such mutual charity should obtain between members of different creeds, when they say that one religion is as good as another or that all religions are true. But if we take the words themselves they can indicate only the shallow-mindedness of the one who uses them rather than a charitable and tolerant spirit.

Religious Obligations Are Moral Obligations. The duties we have thus far enumerated derive from the natural obligation of an intellectual being to use his intelligence and be faithful in his own interior life to the dictates of reason. Considering our human nature, and its strong emotional component, we must exercise due care that a selfish emotionalism does not cloud our judgment and influence the conclusions at which we arrive.

Conscience we have defined above as reason sitting in judgment on conduct. In that sense the conclusions at which we have thus arrived, dictating our own internal attitude towards God and its honest expression, become duties binding in conscience.

The supreme moral and religious duty becomes the internal recognition of God as the Supreme Ruler and Cause of all causes and of ourselves as beings dependent on God and its due expression when occasion calls, that is to say, the duty of adoration. When we follow out this duty of

adoration it involves not merely a speculative private philosophy but participation in public worship.

Those who have learned and accepted the fact of revealed religion and the existence of the Church as a society established by God with authority to teach will have their sacramental duties within the Church.¹ But into these the science of ethics does not enter any further than to point out the fact of such duties.²

¹ One problem that often confronts a nurse is that of baptizing a dying infant. A Catholic nurse has an obligation to do this if it is in any way possible. A non-Catholic nurse, though she has no obligation in virtue of membership in the Church to do so, out of a sense of human kindness should always baptize the child of Catholic parents. She should realize that it will mean a great happiness to them to be informed that the child was baptized. The Church recognizes the baptism as valid if anyone, Catholic or non-Catholic, intending to do what the Church wants to be done, takes *water* and pours it on the head of the child (or a dying adult for that matter who wanted to be baptized) and says *while* (not before nor after) pouring the water: *I baptize thee in the name of the Father and of the Son and of the Holy Ghost*. A priest, however, should always be called if there is time. In like manner a non-Catholic nurse will always out of a sense of human kindness call a priest when a Catholic requests it. There could be no greater unkindness than to neglect or even refuse to get a priest for a dying Catholic.

² For principles and problems see end of next chapter.

CHAPTER 24

THE MORAL OBLIGATION OF PRAYER

Necessity of Prayer. From the fact that God is an intelligent being and we are intelligent beings, that we can know God and that *a fortiori* God Who is Infinite Intelligence can and must know us, there arises the duty of prayer.

Our duty towards God is not absolved by having once recognized Him as our Supreme Lord and Master. The finite mind must often elevate itself to the Infinite Mind and this elevation of the mind to God is prayer.

Furthermore human experience teaches man his own moral weakness. It is very difficult for him to attain the moral ideal of perfection in all the virtues. Since this ideal ultimately comes to us like all other good things from God, the First Cause of all that is, it is reasonable to conclude that what God commands and makes difficult of attainment He will help us to obtain if we ask the help. Hence arises our duty to pray to God for the help that is necessary to attain the moral ideal.

Prayer in Pagan Philosophy. Even pagan philosophy has recognized the duty of prayer to God and the great importance in human life of striving for moral perfection. As an example which might be multiplied indefinitely one may take the *Carmen aureum* and the commentary of Hierocles (who lived and taught around 420 A.D.).¹

¹ The *Carmen aureum*, or "golden song," on which Hierocles commented goes back prior to Hierocles and perhaps to pre-Christian times. Mullach attributes it to Lysis (circa 400 B.C.). Hierocles was undoubtedly influenced by Christian thought but his ideas are interesting as showing how Christian concepts found a home in the mind of a pagan philosopher. See G. A. Mullachius: *Fragmenta Philosophorum Graecorum* I, 408-484.

"Philosophy," said Hierocles, "is the purgation and perfection of human life . . . which restores that blessedness of life proper to man and brings back his likeness to God."¹

To attain this he must not only think about high things but put into daily practice the principles of philosophy, that is to say, he must undertake with all seriousness to lead a good life.

It is most remarkable how those who have thought seriously about leading a good life have laid stress on the value of the daily examination of conscience. Thus the *Carmen aureum*:

"Let not sleep enter your weary eyes until
You have first gone over one by one the works of the
day.
In what have I sinned? What have I done? What
have I omitted? What should I have done?
Begin from the first and go through each thing in turn
and then
Admit the wrong, convict thy ownself, but rejoice in
the good."²

And then the *Carmen* continues:

"Now gird yourselves for the work,
Having prayed the gods to bring it to a perfect end."³

Hierocles thus comments upon the idea expressed in the ancient song:

"Although the choice of good things is a matter of our free will, nevertheless since we have received free will itself from God, we are in utter need of His help

¹ Mullach, op. cit., p. 416.

² Mullach, op. cit., p. 460, lines 40-44.

³ Mullach, op. cit., p. 466, lines 48-49.

if we are to bring to perfection the things which we have chosen.”¹

If pagan philosophy could prescribe the necessity of evening prayer and asking God's help to attain to moral perfection, a Christian should realize that the custom of morning and evening prayer is one that cannot be neglected with impunity.

Neglect of Prayer. In fact we may say that since moral perfection is the best of all goods obtainable by man, and moral degradation the worst of evils into which he can fall, it is a matter of grave obligation resting upon all to take serious steps to attain the supreme good known to man and to avoid the greatest human calamity. Experience shows that one who relies solely on his own efforts in attaining moral perfection must look forward to failure and may be happy if he escapes utter moral degradation. Hence it becomes a matter of grave obligation to turn to God from Whom alone we can expect the moral help that is necessary to keep the moral law. Therefore the *utter neglect* of prayer year after year is a grave sin.

How often should we pray? In times of war sentinels are constantly on the watch. But all our life is a moral warfare and we must be constantly on the watch, often turning our minds to God to behold the moral ideal at which we aim and to ask for help in the time of need. Every evening it is well to examine our conduct in the day that has passed and then ask God, Who directs all minds and wills to the moral ideal He Himself delineates, to forgive any willfulness we have manifested in seeking our own ends and not His. And every morning we should ask the help, that He alone can give, to attain to the perfection of the moral ideal.

Blasphemy. The very opposite of prayer is blasphemy. St. Thomas points out that this word means in general to

¹ Mullach, op. cit., p. 466.

say anything that is derogatory to the good name of another but especially to make use of such speech in regard to God.

"Now God, as Dionysius says (*De div. nom. cap. 1, a med. lect. 2*), is the very essence of true goodness. Hence whatever belongs to God pertains to His goodness; and whatever does not pertain to Him is far distant from the nature of perfect goodness, which is His essence. Whoever therefore denies anything of God which belongs to Him, or asserts of Him what does not belong to Him derogates from the Divine Goodness. Now this can happen in two ways:

"(a) only according to the opinion of the intellect.

"(b) in conjunction with a certain hatred of the heart, as on the contrary faith is made perfect by the love of God. . . . If this is found in the heart only it is blasphemy of the heart, but if it is given exterior expression in speech it is blasphemy of the mouth."¹

Blasphemy as thus explained is a very grave matter. Although people sometimes blame God for the evils that befall them they do not really mean that God is wicked, but are merely expressing their rebellion at what they do not understand or what they really know is their just desert from many points of view. Blasphemy, like formal denial of what we know is true, is a lie, but a lie that is intended as an insult to God and is by its very nature a grievous sin. Fortunately it is rarely met with in actual experience.

Profanity. Somewhat akin to blasphemy is the use of God's name in vain. Sometimes the phrase in which the name of God occurs is in itself blasphemous, but is used without the user being really conscious of its meaning. Because of the inadvertence with which such phrases are used they are usually in themselves only venial sins.

¹ St. Thomas. *Summa Theologica*, 2. 2. Q. XIII, i.

Man has a duty to honor him to whom honor is due. This is one aspect of intellectual honesty. If a man has done a great and good work I should, as a fair and honest man, acknowledge it; but in doing this I honor him. *A fortiori* I should acknowledge God as utterly transcending any human excellence. But to banter the name of God about on all occasions is to treat God with disrespect, as if He were not the great and wonderful Being that He is. Hence because of His transcendent dignity and infinite goodness I should use His name only in prayer and with profound reverence.

Furthermore every man should take into consideration the feelings of others and not make himself a nuisance to anybody. Even an atheist who felt no personal duty to God should spare the feelings of his fellow men and not make himself annoying to them. Because profanity and all unseemly speech is offensive to others it is part of our duty to our fellow men to eliminate it from our vocabulary.

It may be true that you say what you say without thinking and because of your inadvertence you are excused from a willful sin against God and man. But profanity is really a serious matter on account of the reverence that man owes to God. Therefore one who has been so unfortunate as to develop a fixed habit of profane speech has a grave obligation to rid himself of the habit.

PRINCIPLES ¹

1. Every man has a duty to work out a philosophy of life in which he takes an honest attitude towards God and religion.

2. Intellectual honesty demands that we recognize God

¹ The principles and problems given here cover also the matter of the preceding chapter.

as the Supreme Ruler and Cause of causes, that is, adore God in the depth of our own mind.

3. Internal adoration is not sufficient, but we must be honest before our fellow men and give expression to our interior conviction when occasion demands it.

4. Every social unit, every family and every state has, as a social unit, a duty to give to God the service that is His due.

5. It is the duty of every man to take some attitude towards revealed religion.

6. Religious indifference is a sin because God and religion must concern every intelligent being.

7. The finite mind must often elevate itself to the Infinite Mind in prayer by which we

(a) contemplate God as the moral ideal;

(b) ask God's assistance to realize in ourselves the ideal of perfect virtue.

8. Those who have the habit of using God's name in vain have a serious obligation to rid themselves of the habit because

(a) of the supreme reverence due to God;

(b) no man can allow himself to become a nuisance to other men.

PROBLEMS FOR DISCUSSION

Consider the following problems in the light of the principles developed in this and the preceding chapter.

1. A woman died this morning and again I feel that I should have had some prayers said at her bedside. We did not even have a Litany for the Dying. I plan to get a copy for each ward as soon as I can.

2. Since entering training I have found it difficult to pray; it seems that I have too many things (duties, etc.) on my mind. How can I avoid this?

3. Having nothing to do, should I or shouldn't I go to Church and Sunday School today? I didn't.

4. Big argument among the preliminary students as to the question: "Should a Catholic nurse baptize a non-Catholic dying baby without the permission of its parents?" The girls said "Yes" and a certain priest. But our supervisor said "No" and I agree with her. Priest's answer was that the parents would never know and a life would be saved.

5. A very ill patient seems to be gradually growing weaker (to the nurse). The interne is satisfied. He states that he does not think she is ill enough to call the priest or her family. Should the nurse, knowing what it would mean to her patient's family if she should die without the Last Sacraments, call the priest on her own accord?

6. I asked the priest to give Extreme Unction to a very sick patient but he refused because he said the patient did not seem that sick to him. This often happens. I thought Extreme Unction should be given while the patient is still conscious enough to know, if possible.

7. If a woman is aborting and the caput is in view, is the fetus considered baptized if water is poured on the caput and the necessary words said or should the fetal sac be cut and the fetus baptized? ¹

8. When a baby is born dead and the doctor states that it has been dead for several weeks, isn't it right to baptize it to be on the safe side? ²

9. Patient who was to have a colostomy was being baptized a Catholic. Patient asked Chaplain if I might be her sponsor. I was. She recovered so as to return home. Are my duties ended? ³

10. A Catholic girl is asked to take part as godmother in

¹ The head should be baptized after the rupture of the sack.

² In view of the fact that the physician might be wrong one could baptize the child conditionally.

³ Sponsors must remember their godchildren in prayer and if occasion arises make special effort to help them spiritually and materially, if it is at all possible to do so. Acting as sponsor in baptism is making an implicit contract to carry out these duties.

a Protestant baptism. She does, not understanding that she should not. What should be done about it? ¹

11. Isn't a nurse sometimes allowed to decide whether or not a patient is sick enough to fast or not to fast before Communion? ²

12. If a priest enters a (four bed) ward to hear a patient's confession, should the nurse leave the ward? ³

13. There was a lecture on religion held for all student nurses. I was not included in the group but could have gone if I chose as I was not on duty at the time. Should I go and better myself spiritually as well as mentally, or should I finish my other lesson and retire? I was tired so I chose the latter.

14. This morning at 5:30 A.M. I had to decide whether it would be right or wrong for me, a Catholic, to remain in bed while Mass was going on under the same roof. It did not seem right so after a few minutes of mental argument I got up.

15. Tempted to remain away from Benediction on Sunday evening. Was all ready to go to a show when I remembered about Benediction at 6:30 P.M. Went to Benediction first and then to the show.

16. I think a fellow is going to call me up tonight. I should go to Benediction. Should I wait here for the call or go to Benediction? If I'm not here when he first calls he probably won't call again.

¹ Catholics do not act as godparents in a non-Catholic baptism; and non-Catholics are not asked to act as sponsors in a Catholic baptism.

² Ordinarily it is for the physician to decide whether or not the patient is so seriously ill that he must have medication during the night or that he cannot conveniently fast until the priest can bring Communion. If, however, a physician is not available and a nurse is present, her opinion is to be preferred to that of a lay person. But since it is the priest who gives Communion, he should be told that the patient is not fasting, that it is the physician's or nurse's opinion that the patient is seriously ill and that the condition is such that the sacramental fast cannot well be kept.

³ A general rule cannot be given here. Patients might be too sick to hear what was said or pay attention to what was going on, but a nurse might be able to hear all. She should leave the room if she sees that the patient or priest desires it, or if either requests her to do so.

17. I find it impossible to stay awake at Sunday Mass and I'm always afraid I've missed some parts of the three main parts of the Mass. (I'm on night duty.) I really do my best to stay awake but sometimes and often I do fall asleep. Is that a sin?

18. Is it permitted for one member of the family to stay from Holy Mass on Sundays if there is a sick person in the house who says he does not need anyone to stay with him?

19. Patient of no denomination while very ill with heart trouble demands to have all religious articles such as pictures, crucifixes, etc., removed from his room. Would it be advisable for the nurse to humor him and comply with his demand or try to explain religion to him?

20. If a person speaks irreverently or otherwise about your religion, what would be the ethical thing to do? A person who does that, in my mind, is ignorant of his own religion or he would know better than to say such things.

21. Why is it that so many of the nurses use the name of the Lord in vain so often? I've found myself saying things that I would never have said at home. ("Oh, my God" seems to be used the most often.)

22. Should a Catholic bless herself when working in a ward and the priest comes to give the blessing?

23. Four of us went out on Friday evening—three of us being Catholics. My friend and I ordered the usual Friday menu, but the third Catholic ordered a steak. The fourth party, a Protestant, thought this amusing, but we two felt ashamed of our non-supporting Catholic.

24. Why is it that so many girls who enter training use profane language? Is it really because the work displeases them so much, or is it a habit just done for effectiveness? I wonder if there isn't a way that such a habit can never be started in the newer nursing profession?

25. Some nurses seem to think it smart to use vulgar language. My sister, who is not a nurse, was with me and

a group of other students and she was embarrassed because of the way some of them talked.

26. Nurses should be more careful about their language. Not only do they use too much slang, but they're not careful enough about using good English.

27. Swearing in the nurses' home, in the corridor or anywhere does not sound ladylike or professional.

CHAPTER 25

UTILITARIANISM

Modern philosophy and particularly modern ethics must be regarded as a revolt against religion and an attempt to establish a theory of the universe independent of religious concepts and a theory of morals without taking into consideration the idea of God.

Such a movement is unfortunate for various reasons.

In the first place the attempt to establish independent philosophic and scientific disciplines is doomed to failure. The various systems of the universe are interdependent. Consequently any attempt to dismember the science of the universe except for purposes of convenience in study is bound to lead to a false idea of the independent disciplines that human vanity seeks to establish. Anatomy is not independent of physiology. Physics is not independent of chemistry. Psychology is not independent of philosophy. Epistemology is not independent of psychology. Cosmology is not independent of theodicy. Ethics is not independent of philosophy nor in its fullest development can it remain independent of theology.

Secondly, one who would make the attempt should at least consider for a moment the possibility of the existence of God, the Supreme Intelligence in a universe of intelligent beings and the First Cause of all that is. No one can say that any scientific evidence has excluded the concept of an intelligent First Cause of all that is. It is certainly clear that a theory of the universe which leaves out of consideration the Ultimate Source of all that is and declines to in-

investigate its existence or its nature is worse than Hamlet without the Prince of Denmark. Various special sciences may well be studied without such an investigation, but when one comes to attempt a philosophy of the universe and the ultimate explanation of all things one will realize more and more the interdependence of all sciences and the final relation of all present day facts to the First Cause of all that is.

Finally, as far as ethics is concerned, the attempt to create a philosophy of morals that is independent in the sense that it begins and ends with the phenomena of the mind, but has nothing to do with the relation of man to God, is not only an unfortunate blunder but unethical and immoral. It can be excused only by the ignorance of those who know not what they do. Such an attempt can lead only to a chapter in descriptive psychology; it can never become a valid moral philosophy.

The history of these attempts is a history of failure, and present-day ethical speculation is conscious of its own inadequacy but rejoices in the fact that no one looks to it for guidance, though it is sometimes so optimistic as still to hope for better things.

Thus Charner M. Perry writes in the *International Journal of Ethics*:

“Nothing is so conducive to moral skepticism as reflection upon discussions of the theory of value. Skepticism does not find its major source either in the disagreements so frequent in such discussions or in the growing conviction that there is no way in which the conflicting doctrines may be tested. Since theory and practice are often separated, the fact that value theorists are not usually regarded by the public or by themselves as promising sources of advice in regard to social policy or the art of living need not be destructive of confidence

in value theory. Disagreement, the impossibility of verification, and apparent uselessness are disappointing; but these discouraging handicaps are not fatal.”¹

We shall now give a brief outline of attempts at an independent ethics in modern philosophy, that is, of ethical systems which have attempted to develop a valid moral philosophy independent of the concept of God.²

HOBBS

The first approach to such an attempt of major importance in the history of modern philosophy was made by Thomas Hobbes (1588-1679) in the seventeenth century. It is interesting to note that the system of Hobbes is essentially the same in its fundamental aspects as the final result in our day of the attempt to develop an independent ethics by a psychological analysis of the concept of value.

In the philosophy of Hobbes we may distinguish a two-fold morality:

- (a) that which is natural to man;
- (b) that which is imposed on man by civil authority.

It is this natural morality which is identical with the final outcome of the Austrian philosophy of values. Natural ethics is derived from love and hate.

“Whatsoever is the object of any man’s appetite or desire; that is it, which he for his part calleth good: and the object of his hate and aversion evil, and of his contempt vile and inconsiderable. For these words of

¹ Charner M. Perry. Bases, arbitrary and otherwise for morality: a critique criticized. *International Journal of Ethics*, 1933, 43, 127-166, p. 127.

² If one reads the interesting little work of Roscoe Pound (*Law and Morals*. Chapel Hill, North Carolina: 1926. Pp. x + 144) he will see how in various ways the concept of law and its binding force have followed the meanderings of philosophy.

good, evil and contemptible are ever used with relation to the person that useth them, there being nothing simply and absolutely so, nor any common rule of good and evil to be taken from the nature of the objects themselves, but from the person of the man (where there is no commonwealth) or, (in a commonwealth) from the person that representeth it, or from an arbitrator or judge whom men disagreeing shall by consent set up, and make his sentence the rule thereof.”¹

In various places Hobbes insists upon the fact that by original nature anything a man wants to do is right, or at least not wrong, even when he wants to rob and kill. For the natural condition of men² is a war of every man against every other man.

“To this war of every man against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice have there no place.”³

Such an extreme egoism must be limited and Hobbes limits it by civil authority. Reason itself dictates its limitation for it is reasonable to live on in peace and security; but peace is incompatible with war and so “to seek after peace and follow it” becomes the first law of nature.

“And therefore, as long as this natural right of every man to every thing endureth, there can be no security to any man (how strong or wise soever he be) of living

¹ Thomas Hobbes. *Leviathan or the Matter, Form and Power of a Commonwealth, Ecclesiastical and Civil*. (London: 1651.) Oxford Edition, 1881, I, vi, pp. 35-36.

² That is, the condition to which they are inclined by nature, whether or not there ever existed a time in primitive society when each man was independent and waged a war on every other man.

³ *Leviathan*, I, xiii.

out the time, which nature ordinarily alloweth men to live. And consequently it is a precept, or general rule of reason that every man ought to endeavour for peace, as far as he has hope of obtaining it; and that when he cannot obtain it, that he may seek and use all helps and advantages of war.”¹

And so it is reasonable, according to Hobbes, for a man to subject himself to social or civil authority. There are two ways in which social or civil authority is set up:²

(a) by natural force as when a father makes his children obey;

(b) by mutual agreement.

Hobbes seems to take the idea that in present-day life everyone in civilized surroundings is a subject of some state. He has been conquered and yielded his rights to the conqueror or by tacit consent has in some manner accepted the civil government as his protector and in exchange for the protection yielded his rights to war against every other man. The result is that he is *bound by contract* to obey the laws of civil authority. And so the members of the state each one, and all together, “confer all their power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices to one will.”³

The laws of the state, whatever they may be, thus become absolute.

“Civil law is to every subject those rules, which the commonwealth hath commanded him by word, writing, or other sufficient sign of the will, to make use of for the distinction of right and wrong.”⁴

The subject, according to Hobbes, is bound to profess the

¹ *Leviathan*, I, xiv, p. 97.

² Cf. *Leviathan*, II, xvii, p. 131.

³ *Leviathan*, II, xvii, p. 130.

⁴ *Leviathan*, II, xxvi, p. 205.

religion laid down by the law of the land¹ and in all things to do as the state commands.

Power with Hobbes means right, and because the state can punish one who disobeys it has a right to do so. Hobbes derived God's right to punish from His omnipotence.²

And so the first attempt to limit the egoism, which asserts that what I like is good and what I dislike is bad, ended in the establishment of the concept of an absolute monarchy as the sole criterion of right and wrong. No one is likely to take such a notion seriously at the present day. But supposing one could prove that each individual had by contract given his native state an absolute right to determine his morals and religion, one could not look upon that as an *ultimate* criterion of morality. For even the validity of contracts is open to question. And one of the fundamental conditions of a contract is that what is contracted must be essentially good. No man has a right to let the state determine absolutely and finally all his moral obligations to God and man. One who would derive from the history of despotism a code of morals would develop a strange and contradictory ethical system.

BENTHAM

Jeremy Bentham (1748-1832) in his attack on Blackstone thus criticizes the concept of civil authority resting on a social compact.

"Allow that the obligation of a promise is independent of every other: allow that a promise is binding *propriâ vi*—Binding then on whom? On him certainly who makes it. Admit this: for what reason is the same individual promise to be binding on those who *never*

¹ Leviathan, II, xxxi.

² Elementa philosophica de Cive. Amsterdam: 1696. Religio XV, vii.

made it? The King, fifty years ago, promised my Great-Grandfather to govern him according to Law: my Great-Grandfather, *fifty years ago*, promised the King to obey him according to Law. The King, *just now*, promised my *neighbour* to govern him according to Law: my neighbour, *just now*, promised the King to obey him according to Law.—Be it so.—What are these promises all or any of them *to me?*"¹

Whatever may be the source and character of civil obligation anyone may well question that he ever made, either explicitly or implicitly, any promise to limit his moral and religious obligations to, and make them coextensive with, any laws, no matter what they might be, that the civil government might ever pass.

Bentham went further; he took exception to Blackstone's contention that no human law should be suffered to contradict the natural or divine law and that "if any human law should allow or enjoin us to commit it (an offense against the natural and divine law, e.g., murder) we are *bound to transgress* that human law, or else we must offend both the natural and the divine."²

Blackstone was the expositor of a law and ethics that had its foundation in the concept of God. The fundamental principles of this law and ethics were to be worked out by reasoning upon the essential rights and duties that must arise from men living together in society and in intellectual relation to God. Bentham did not understand the rational law and ethics of Blackstone because of his narrow sensationalism. And so he carried on the revolt against an ethics founded on theodicy and attempted to establish the principle of utility as the sole criterion of right and wrong.

¹ Jeremy Bentham. *A Fragment on Government*. Edited by F. C. Montague. Oxford: 1891. Pp. 162-163. By permission Oxford University Press.

² Bentham quoting Blackstone, *op. cit.*, p. 213.

He conceived of human beings as dominated by the desire to enjoy pleasure and avoid pain. It is for pain and pleasure "alone to point out what we ought to do, as well as determine what we shall do."¹ "The business of government is to promote the happiness of the society, by punishing and rewarding" and happiness consists in "the enjoyment of pleasures" and "security from pain."²

The words *ought*, *right* and *wrong* have a meaning, says Bentham, when they refer to a course of action in which the consequences have been weighed so as to judge whether or not it contributes to the greatest possible happiness of the greatest possible number.

A course of action which contributes to the greatest possible happiness of the greatest possible number is right, according to Bentham's utilitarianism, and ought to be adopted, and any contrary course is wrong and ought not to be adopted.³

Bentham's philosophy of morals would be quite appropriate for developing conditioned reflexes in animals incapable of perceiving ideals and powerless to direct their own conduct by personal initiative in channels chosen by themselves. We might say that it has been found inadequate by experience. No one at the present time would want to govern human conduct solely by a system of rewards and punishments. We now try to study the whole personality of the problem boy and girl, to show them the opportunities that life holds out, to stimulate them to personal effort and aid their efforts by opening possible channels of success. It is the power of an individual to see ideals for himself and strive for them that makes for success. Wrong does not consist primarily in the pain caused by an action. Such

¹ An Introduction to the Principles of Morals and Legislation. Ch. I, § i. By permission Oxford University Press.

² Op. cit., Ch. VII, § i.

³ Op. cit., Ch. I.

pain may be the natural penalty of a wrong action. Wrong is deliberate infidelity to ideals and many actions are wrong when no human penalty can be envisaged. That God punishes wrong actions does not make them wrong but He punishes them because they are wrong. Bentham says duty is created by punishment: "That is my *duty* to do which I am liable to be *punished*, if I do not do."¹ On the contrary, duty is prior to all punishment and binds even should one think that one could neglect duty and escape all punishment.

MILL

John Stuart Mill (1806-1873) tells in his autobiography how the reading of Bentham gave him "what might be called an object in life: to be a reformer of the world."² And so he built upon the foundations of Bentham. He gave to utilitarianism a distinction that was sadly needed in Bentham's work, namely, the differentiation between higher and lower pleasures.

He thus defines the fundamental concept of the utilitarianism he professes:

"The creed which accepts as the foundation of morals, Utility or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain, by unhappiness, pain, and the privation of pleasure."³

Mill then goes on to point out that the objection to this theory which says that it lowers man to the level of swine is

¹ Fragment on Government, V, vii, p. 234. By permission Oxford University Press.

² Autobiography of John Stuart Mill. New York: 1924. Ch. V, p. 93.

³ Utilitarianism by John Stuart Mill. London: 1901. Pp. 9-10.

unreasonable, "since the accusation supposes human beings to be capable of no pleasures except those of which swine are capable."¹

"Human beings," he says, "have faculties more elevated than the animal appetites, and when once made conscious of them, do not regard anything as happiness which does not include their gratification."²

It is a great mistake, says Mill, to consider quantity alone in pleasure and in other things to take into consideration both quantity and quality. Ethics is the body of science dealing with those rules and precepts by which the maximum pleasure, with due regard to both quantity and quality, may be secured for the individual and for mankind.

"According to the Greatest Happiness Principle, as above explained, the ultimate end, with reference to and for the sake of which all other things are desirable (whether we are considering our own good or that of other people), is an existence exempt as far as possible from pain, and as rich as possible in enjoyment, both in point of quantity and quality; the test of quality, and the rule for measuring it against quantity, being the preference felt by those who, in their opportunities of experience, to which must be added their habits of self-consciousness and self-observation, are best furnished with the means of comparison. This, being, according to the utilitarian opinion, the end of human action, is necessarily also the standard of morality; which may accordingly be defined, the rules and precepts for human conduct, by the observance of which an existence such as has been described might be, to the greatest extent possible, secured to all mankind; and not to them only,

¹ Op. cit., p. 10.

² Op. cit., p. 11.

but so far as the nature of things admits, to the whole sentient creation.”¹

Mill must not be thought of as holding that the end of human conduct is the general happiness of the race and that each human being is to desire and work for the happiness of the race and sacrifice his own. This, he says, is noble and heroic, but the ordinary man works out his own happiness while making his own little contribution not to the happiness of the world at large but to that of those with whom he comes in contact.

In fact he lays down the general principle :

“No reason can be given why the general happiness is desirable, except that each person, so far as he believes it to be attainable, desires his own happiness.”²

Ultimately it would seem he must take refuge in egoism, but he holds up the ideal of attaining one's own happiness and at the same time making a contribution to that of those with whom one comes in daily contact.

The fundamental difficulty with the position of John Stuart Mill and that of all utilitarians may be brought out by considering the following comparison.

Here is an actual case. In a certain insane asylum there has lived for many years a man with paranoia, who harbors the fixed delusion that he is admiral-in-chief of the United States Navy. Every day he writes out his orders and sends the ships to all quarters of the globe. Sometimes he radios his orders by the mechanism of his own mind. He has a high sense of his own value in the world. He is enjoying what many a naval officer would earnestly crave. He has attained to a life of pleasure and he has no pain. He lives at perfect ease in the insane asylum. No one contradicts his

¹ Op. cit., p. 17.

² Op. cit., Ch. IV, p. 53.

orders and he has a complete assurance that they are always entirely successful. If he becomes aware that anything untoward has happened, he is able to correct matters promptly by instantly radioing orders that never fail to set things right immediately.

On the other hand, take any sailor or ensign in the navy. He has much to suffer; nothing ever goes perfectly right for very long. He is ordered about; he suffers from the heat and cold and the separation from home, and only occasionally gets shore leave or is able to live for a few days in the bosom of his family. His pleasures are not so intense nor of such a lofty character, nor so continuous as those of the admiral-in-chief of the United States Navy who lives in the insane asylum.

But you may say that the "admiral-in-chief" is concerned only with his own happiness and the sailor or ensign is contributing to the happiness of his family. Well, suppose we could find a potent drug that would make an "admiral-in-chief" of as many men as it might be administered to, and that they would all thereafter live in blissful delight for the rest of their days, would it not be a noble thing for the human race to bestow this happiness on at least some of its members? If "pleasure and the absence of pain" constitute true happiness and "no reason can be given why the general happiness is desirable, except that each person . . . desires his own happiness," all those living in the bliss of grandiose delusions have attained the end of man.

But the fact is that happiness has an *objective* as well as a subjective side and all forms of utilitarianism ignore the objective element in happiness. One might think that he eats for the pleasure of eating, but this is not the real reason. If he lost all pleasure in eating he would still eat on, or try to do so, in order to live. One eats, therefore, to live and

the pleasure of eating is a happy accident which one is glad to enjoy.

Mill himself became conscious of the fact that his theory of morals was psychologically inadequate. In his autobiography he tells us how the reading of Bentham led him to the desire of becoming a reformer. He launched upon his career with enthusiasm and all went well for several years. Then came what seems to have been a period of real mental depression and all enthusiasm was dissipated, "joy departed and only grief remained." He writes:

"All those to whom I looked up, were of opinion that the pleasure of sympathy with human beings, and the feelings which made the good of others, and especially of mankind on a large scale, the object of existence, were the greatest and the surest sources of happiness. Of the truth of this I was convinced, but to know that a feeling would make me happy if I had it, did not give me the feeling. My education, I thought, had failed to create these feelings in sufficient strength to resist the dissolving influence of analysis. . . . I was thus, as I said to myself, left stranded at the commencement of my voyage, with a well-equipped ship and a rudder, but no sail; without any real desire for the ends which I had been so carefully fitted out to work for: no delight in virtue, or the general good, but also just as little in anything else."¹

The depression started to lift after reading in Marmontel's *Mémoires* how he felt and made the family feel that he, though a mere boy, would supply the place of the father they had lost. Mill then continues:

"The experiences of this period had two very marked effects on my opinion and character. In the first place,

¹ Reprinted from the Autobiography of John Stuart Mill, 1924, by permission of Columbia University Press.

they led me to adopt a theory of life, very unlike that on which I had before acted, and having much in common with what at that time I certainly had never heard of, the anti-self-consciousness theory of Carlyle. I never, indeed, wavered in the conviction that happiness is the test of all rules of conduct, and the end of life. But I now thought that this end was only to be attained by not making it the direct end. Those only are happy (I thought) who have their minds fixed on some object other than their own happiness; on the happiness of others, on the improvement of mankind, even on some art or pursuit, followed not as a means, but as itself an ideal end. Aiming thus at something else, they find happiness by the way. The enjoyments of life (such was now my theory) are sufficient to make it a pleasant thing, when they are taken *en passant*, without being made a principal object. Once make them so, and they are immediately felt to be insufficient. They will not bear a scrutinizing examination. Ask yourself whether you are happy, and you cease to be so. The only chance is to treat, not happiness, but some end external to it as the purpose of life.”¹

In other words, Mill came by psychological experience to realize the necessity of objective ends. We must work for our own real improvement and perfection, for the real betterment of human beings and not for the feeling of pleasure we obtain in contemplating our own progress and what we have done to help humanity. Not the pleasure experienced in self-complacency but the real welfare of human beings gives the true value to human conduct. And, after all, this is the true interpretation of the attitude of most benefactors of humanity. Suppose a wealthy man builds a hospital for

¹ Op. cit., pp. 141-142.

crippled children. He is aiming primarily and directly at the good that can be done by restoring to cripples the normal function of their limbs and this is the real good that he does. The pleasure he feels in contemplating what he has done is not really what he aimed at bringing about nor the real good he accomplished. Objective values and not subjective feelings are the true ends of conduct. If the pleasure of self-complacency were the end of conduct, one who dreamed of great deeds and took pleasure in the dream would attain to the aim of human life as truly as one who enjoyed the same amount of pleasure by actually doing that of which the other man only dreamed.

The realization of the essential importance of objective values which Mill experienced, when he went through his depression in 1826, should have led to a clear outline of these objective values when he wrote his essay on Utilitarianism in 1863. But no one who reads that essay could come to the conclusion that his philosophy of life laid down the principle that the only chance of attaining to the end of life "is to treat, not happiness, but some end external to it, as the purpose of life."

CHAPTER 26

KANT AND THE PHILOSOPHY OF VALUES

With John Stuart Mill utilitarianism attained its highest point of development, but in the meantime there had arisen another philosopher of morals fundamentally opposed to egoism and altruism and claiming to have developed an absolutely independent ethics. This was Immanuel Kant (1724-1804).

KANT

Kant proceeded from an analysis of the will itself.

"There is," he says, "nothing in all the world, nor can anything whatsoever be possibly conceived, which can be looked upon as good without restriction excepting only a *good will*. Understanding, keenness of mind, power of judgment and whatever talents of the mind might be mentioned, or courage, fixity of purpose, fidelity to resolutions as attributes of character, are beyond doubt good and desirable in many respects, but they can become most wicked and harmful if the will, that is to make use of these natural gifts and whose peculiar constitution is therefore termed character, is not good."¹

Kant then went on to argue that only what the will accomplishes out of a sense of duty is truly morally good.

¹ Grundlegung der Metaphysik der Sitten. (1785.) Erster Abschnitt. Kant's Werke. Berlin: 1903. IV, 393.

Many acts may be in accordance with duty though done for other purposes. Thus it is a duty to protect one's own life. When we do this because we want to live, our actions are in accordance with duty but they are not done purely out of a sense of duty and, therefore, are not truly moral. They are rather to be termed morally indifferent, for they are not bad and not truly and formally good. When, however, we are tired of life, or perhaps see that life holds out for us only pain and sorrow unto the end, and nevertheless take care of our health and try to live on in spite of all *because it is our duty*, then our actions assume a formal moral character and are truly and essentially good.

He then laid down the principle that an action is good not because of what is intended, but by reason of the principle of conduct by which it is governed. Kant defines duty as "the necessity of acting out of reverence for the law."¹

What now must be the principle of conduct by which the will must be governed?

"Since," he says, "I have robbed the will of all motives which might be derived (from the happy results) of following any special law, there remains nothing more than the general lawfulness of actions in itself which alone can serve the will as its principle (of conduct), that is: *I should never act in any other way than so that I can will that the principle of my action can become a universal law.*"²

To express better the idea of absolute necessity of obeying the law he formulated his categorical imperative as follows:

¹ Op. cit., p. 400.

² Op. cit., p. 402. The words in parentheses have been inserted to bring out the meaning which may be gathered from the context but would be obscured were they left out in an isolated quotation.

“Act as if the principle which governs your voluntary action would have to become a universal law of nature.”¹

He then takes several examples of morality placed under stress of circumstances. E.g., a man needs money. He wants to borrow it, although he knows he will never be able to pay it back; but he concludes that he will borrow the money and will promise to pay it back in spite of the fact that he knows perfectly well he will never be able to keep his promise. Could anyone wish that there would be a universal law of nature compelling men in stress of circumstances to make false promises? Such a natural law

“would make promising itself an impossibility as well as the ends that one might desire to accomplish by it, since no one would put any faith in what was promised him but would laugh at all such statements as empty declarations.”²

Kant later developed the idea of the immortality of the soul and the existence of God as fundamental postulates of the categorical imperative that binds the will to moral perfection.

The moral law binds us to absolute, complete and perfect conformity with itself in all things little and great. This perfect conformity of the will to law is sanctity. But perfect sanctity is never attained on earth and can only be approached by an eternal process of approximation lasting through infinite time. We are bound to attain perfect conformity to the moral law but can only do so by life without end. The practical reason therefore demands the immortality of the soul as a necessary postulate.³

¹ Op. cit., p. 421.

² Op. cit., p. 422.

³ Kritik der praktischen Vernunft. (1788.) Book II, Part ii, Ch. 4.

Happiness is the condition of a reasonable being who finds the perfect satisfaction of all his desires as well as the accomplishment of what he wills as a rational being. As man exists now, he is bound by the categorical imperative to obey the moral law often in spite of his desires and with no guarantee from anything in nature that obedience will finally lead to that perfect harmony of nature and mind in which he will find the full satisfaction of all desires as well as the accomplishment of what he wills and should will as a rational being. But we must strive for the highest good and it must be possible to attain that for which we are bound to strive. It is, therefore, a postulate of practical reason that some being, distinct from nature and with absolute control of nature, should exist, who can will and effect the perfect harmony between nature and the mind of man, so that he who obeys the moral law attains the perfect satisfaction of all his desires as well as the accomplishment of what he wills as a rational being. The existence of God therefore is a postulate of practical reason.¹

Such was the attempt of Kant to develop an independent and autonomous ethics. But it was inadequate and involved, after all, the concept of God. It did not, however, start with this concept as the foundation of ethics but deduced the idea of God as a postulate demanded by an autonomous ethics.

Fox has expressed the relation of religion and morality in Kantian ethics most appropriately and picturesquely in the following manner.

“God, instead of being the sanction and source of morality, appears at the end, to play the rôle of the magnate who distributes the prizes for good conduct at the Sunday school. But as the pupils were strictly for-

¹ *Op. cit.*, II, ii, 5.

bidden, under penalty of forfeiting their chances, to work for the prize, his influence on the behavior of the school is reduced to nothing.”¹

The fundamental difficulty is that Kant has not really developed an independent ethics. His formulation of the fundamental law of morality which bids us consider what would result if the principle of our conduct, by which we resolve a moral conflict, were to become a law of nature binding all men to do likewise, is a very convenient test by which we can judge our proposed course of action. But when we ask why we must follow it, the answer is because of the unhappy results that would arise if our moral principle on a given occasion became a universal law binding all men to do likewise. We must not make false promises to get out of a difficulty because if all men were forced to make such promises no promise would have any meaning. The good order of society and the dignity of the human personality become the ultimate criterion of morality, and ethics ceases to be independent and autonomous and looks away from the good will itself for an objective criterion to distinguish between a good and a bad will.

In the last analysis, therefore, the Kantian ethics is not independent. The moral principle he develops out of an analysis of the will cannot stand alone. He himself really appeals to external standards but he does not supply them. We are left to determine for ourselves the ultimate reason why we cannot desire that a course of action might not well become a universal law binding all men to do likewise.

Kant's ideal of an independent ethics filtered down to the minds of those who were not at all in sympathy with his formalism.

¹ James J. Fox. *Religion and Morality*. New York: 1899. Pp. 322. P. 244.

BRENTANO

Among these there was Franz Clemens Brentano (1838-1917), who expressed to his students the idea that ethics should be founded on psychology,¹ and unwittingly he gave rise to an ethical movement which he himself would have repudiated in many if not most of its developments. Brentano made an analogy between willing and judging the starting point of ethical speculation. Willing, he pointed out, in the sense of loving and hating, may be righteous loving and hating just as a judgment can be true or false.² The whole problem of ethical speculation then becomes the distinction between righteous and unrighteous loving and hating.

By righteous and unrighteous loving and hating Brentano does not mean a mere deception of judgment but a morally responsible act based upon correct information. We are responsible for right loving and right hating. When he came to the question: What makes love and hatred righteous or unrighteous? he followed first the lead of Aristotle. The good is the ultimate end of human action. But when he came to define this end his answer was a mixture of Greek philosophy and John Stuart Mill.

"A certain harmonious development and exercise of all our noblest powers seems, therefore, from this point of view to be, at any rate, what we must strive after."³

"To promote as far as possible the good throughout the great whole, that is manifestly the right end in life,

¹ On this movement arising out of Brentano see:

HOWARD O. EATON. *The Austrian Philosophy of Values*. University of Oklahoma Press: 1930. Pp. 300.

HAROLD OSBORNE. *Foundations of the Philosophy of Values*. Cambridge: 1933. Pp. xxii + 132.

² See: Franz Brentano. *The Origin of the Knowledge of Right and Wrong*. English translation by Cecil Hague. Westminster: 1902. Pp. xiv + 125. Pp. 13 f. See also: *Psychologie vom empirischen Standpunkt*. Vol. II. Leipzig: 1925. Pp. 83 f.

³ *The Origin of the Knowledge of Right and Wrong*, op. cit., p. 29.

towards which every act is to be ordered, that is the one, the highest command upon which all the rest depend.”¹

If one takes Brentano's concept that there is a gradual transition between feeling and willing² to mean that some voluntary pieces of conduct are almost entirely willing without any feeling, whereas others are so dominantly feeling that one may question their voluntary character, and sees in his justifiable love and hate a responsible voluntary choice accompanied by more or less emotional resonance, then his position is in perfect accord with scholastic philosophy. Responsibility, true and genuine, is the postulate of an ethics that lays down moral obligations binding upon all. Such an ethics was really what Brentano had in mind, but his pupils departed more or less widely from the teaching of their master. His idea of a psychological basis of ethical theory had a profound influence on their minds and there hovered before a number of them the idea of a psychology of values and an independent ethics.

MEINONG

And so Alexius Meinong, Ritter von Handschuchsheim (1853-1920), started out with the proposition that

“all value goes back to the psychological fact of a thing being looked upon as valuable. If we want to know what value is the investigation must make its start with the fact of a thing being looked upon as valuable.”³

¹ The Origin of the Knowledge of Right and Wrong, op. cit., p. 29.

² Psychologie, op. cit., II, viii, p. 83 f.

³ Psychologisch-ethische Untersuchungen zur Wert-Theorie. Graz: 1894. Pp. x + 232. P. 15. For an outline and critique of this work see: Christian Ehrenfels. The ethical theory of value. International Journal of Ethics, 1896, 6, 370-384.

What, however, really constitutes value? One might, he says, state very simply that value for me is what I hold as value. But that, according to Meinong, cannot be true, for what I hold to be valuable may have no value and what I do not hold to be valuable may be very valuable indeed. There is, therefore, a true and objective value which justifies a thing in being held as valuable.¹ In fact, he says that true value depends not on the extent to which an object might be prized but on the extent to which it should be prized by one who had adequate information as well as a normal intellectual endowment and normal balance of his emotional life.

If this is the case no amount of study of the psychology values in mental life will ever suffice to define values. One must approach the problem with a whole philosophy of life to say nothing of the specific information that will be required to distinguish between the true and the counterfeit in various objects of choice.

Meinong then presents the following argument of the egoist:

"All desire is connected with pleasure and there is no desire without this element of pleasure. Now naturally it is the pleasure of the one who desires that comes in question. He who desires, therefore, for the sake of his own pleasure has an egoistic desire. There exists, therefore, absolutely no desire that is not egoistic."²

Meinong expresses his surprise that so many learned men have been captivated by this argument and have not seen its fallacy. His answer (somewhat modified and developed) runs as follows: No man can desire anything except under

¹ "Der Werth bestehe sonach nicht im Werthgehalten-werden, sondern im Werthgehalten-werden-können unter Voraussetzung der erforderlichen günstigen Umstände."

² Wert-Theorie, op. cit., p. 96.

some aspect of the good. It is therefore true that no one can desire anything unless from some point of view it is good for him to desire it. Such a statement, however, merely expresses a truism and does not serve to differentiate between egoism and altruism. The egoist maintains that nothing is good which entails self-sacrifice and does not contribute to his own pleasure and satisfaction. The altruist distinguishes between his own personal pleasure and the welfare of others, and maintains that duty often means the sacrifice of personal pleasure and the advancement of individual interests in order that another's life or major interests may be saved. It is, therefore, good for him to make this sacrifice, but it brings him no pleasure at all. It would be false and utterly unpsychological to say that all those who sacrifice themselves for others do so because of the pleasurable feelings they enjoy from a smug sense of their own generosity. Some may do so sometimes, but not at all times. There is a higher good that intellect alone can perceive, that often has no emotional resonance of a pleasurable character but which is chosen with great effort, in spite of weariness, antipathy and disgust, because the intellect sees a duty and the will decrees that duty must be done.

Leaving Meinong for a moment aside, we may say that as a matter of fact one who undergoes a normal ethical development adopts on mature deliberation certain standards of conduct. Obedience to these standards eventually becomes habitual. Personal pleasure, liking and disliking, do not as a rule enter into the intellectual process by which standards are adopted in the first place. Few and far between are the adolescents who make a cool calculation of how much personal pleasure will accrue from ethical standards of conduct. Most standards are taken originally on authority, and, in the one who undergoes a normal ethical development, are later confirmed by thinking over life and its problems

and so coming to a realization of duty and the appreciation of the moral dignity of man. In later moral conflicts personal pleasure is often a minor factor in the opposing forces and frequently dwindles into insignificance. It is the end of virtue to make ethical conduct spontaneous and, as it were, reflex in character, so that conduct is determined by principles of conduct for whose adoption and development one is morally responsible. Such conduct is not at all determined by egoistic motives. It is moral in its ultimate cause and therefore meritorious, though in a given instance action may follow so promptly on the presentation of a problem that there is little time for deliberation. In the same way vice leads to actions which, as simple pieces of conduct, are not due to deliberation, but the one who is guilty of such vicious acts is responsible for the bad habit or vice by which they are determined.

Returning now to Meinong, we find he comes to the conclusion that in general all behavior which tends to the weal of others is good and all which tends to their woe is bad. All behavior that tends to our personal weal is neither good nor bad. In other words, altruistic behavior is good, anti-altruistic behavior is bad and egoistic behavior is morally indifferent.¹ In coming to this conclusion he makes little use of his analysis of value other than a kind of introspective analysis with reference to the general approval of mankind.

It is clear that Meinong has failed to develop an ethics purely on the basis of a psychological analysis of value. There are true values and false values but the mere psychology of values does not distinguish between them. One must go outside of psychology to the philosophy and endowment of him who evaluates. If his endowment is inadequate or his philosophy false, he may well be deceived in his valuations.

¹ Wert-Theorie, op. cit., § 36, p. 104 f.

EHRENFELS

Christian v. Ehrenfels (born 1850), of whom Ueberweg¹ says he was more a pupil of Meinong than Brentano, attempted to develop a theory of ethics which has its starting point in determinism and was developed by a psychological analysis of the concept of value.

"When," he writes, "we are confronted, in any special case we may please to consider, with the possibility of wanting a or b or c and so on or with wanting nothing at all, that mental process always comes about which brings with it in the next instant of time relatively the most favorable affective mental state, that is, that which possesses relatively the maximum of pleasure and the minimum of pain. Even the most unselfish acts of will are subject to this law."²

This concept is by no means original with Ehrenfels and was probably derived from the English philosophy which Brentano was introducing on the Continent. Thus Bentham, as we have seen, had written long ago:

"Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do."³

The psychology which supposes that human activity is determined solely by pleasure and pain is too naïvely simple to afford anything more than the basis of a speculation as to

¹ Grundriss der Geschichte der Philosophie (Die deutsche Philosophie des XIX Jahrhunderts). 12th Ed. Berlin: 1923. P. 539.

² Werththeorie und Ethik. Viertelsjahrsschrift für wissenschaftliche Philosophie, 1893, 17, p. 92. He is quoting from his previous study: Ueber Fühlen und Wollen Sitzungsberichte der philosophisch-historischen Classe der kaiserlichen Akademie der Wissenschaften, 1887, 114, 523-636.

³ An Introduction to the Principles of Morals and Legislation. Ch. I, 1. By permission Oxford University Press.

what the conduct of certain beings might be if they were absolutely determined by the balance of pleasure and pain.¹

Ehrenfels, however, assumes such a limited and restricted psychology and then proceeds to an analysis of the concept of value.

"This thing is valuable to me means the same as this thing is an object of my desire."²

Ehrenfels recognizes, however, that there is a distinction between true and false values; but he will not allow that any value can be false because it is unworthy the dignity of a man. This would mean an external criterion outside the value itself. False values, according to him, are merely errors of judgment by which one ascribes to an object a value which it does not possess.³

Ethical values are those that a social group of individuals agree upon as objects good for their own sakes, not merely as means to an end, and which call forth the approval of the social group when an individual possesses them and its disapproval when he fails to attain them.⁴

This approval is really Ehrenfels' ultimate standard of morality. It is actually, however, not a standard at all but something to be taken into consideration when the individual's desires are in conflict with the values prized by the social group of which he is a member. Furthermore, according to Ehrenfels, the individual can do nothing about the matter anyhow. If in the moment of conflict he prizes his own personal aims more than the approval of society,

¹ For an analysis of voluntary action see: T. V. Moore. *Dynamic Psychology*. Philadelphia: 1926. Pp. 311 f. For a discussion of freedom see the same, pp. 392 f.; also: *A Historical Introduction to Ethics*. New York: 1915. Pp. 120-127.

² *Vierteljahrsschrift f. wiss. Philos.*, 1893, 17, p. 89.

³ *L.c.*, p. 100.

⁴ *L.c.*, p. 324 f.

he will do what he wants in spite of society; if not he will conform to the standards of the social order. In neither case is he really deserving of praise or blame.

Those who attempt to define true values by an analysis of value itself are like one who, having learned the elements of analytic geometry, would attack in a puerile fashion the problem of defining a straight line solely by locating definitely a single point. Such a definite location would separate off an infinity of straight lines from another infinity of the n th degree, but there would still be an infinity of possibilities after the location of the single point. Values are always values perceived and evaluated by a single individual, but if nothing is located except the individual we cannot say whether they are genuine or false, high or low, worthy or unworthy. Only when the subjective value to the individual is related to the objective standard and criterion of values can we say whether a given value is false or genuine.

The ultimate logical end of any attempt to base value on desire is pure egoism: what I want is right and what I do not want is wrong. This conclusion has actually been drawn.

PERRY

The philosophy of values was transplanted to American soil and tried to accomplish what German thought found impossible, namely, an independent definition of value making no appeal to objective criteria of any kind and founded purely on the psychology of interest.

In a pretentious and bulky volume,¹ Ralph Barton Perry tries to realize Brentano's dream and lay the foundation of ethics on psychology. The result is a Brentano nightmare.

According to Perry,

¹ *General Theory of Value*. New York and London: 1926. Pp. xvii + 702. By permission of Longmans, Green and Company.

"that which is an object of interest is *eo ipso* invested with value. Any object, whatever it be, acquires value when any interest, whatever it be, is taken in it; just as anything whatsoever becomes a target when anyone whosoever aims at it."¹

He says that Aristotle² is wrong in distinguishing between real and apparent good and in saying that a thing's apparent good makes it an object of appetite, and its real good an object of rational desire.

And on the other hand he asserts that Spinoza was right when he claimed that we do not desire things because they are good, but they are good because we desire them.³

Such, then, is Perry's fundamental thesis. In a science such as modern philosophy, where men use terms largely as they please, every writer is conceded the right to define the words he uses. But the definition of terms is often confounded with the establishment of a theory. Perry means by value the fact that an object attracts interest and makes someone want it. In other words, he would make value co-extensive with the Aristotelian concept of the object of appetite. In his psychology there is no place for rational choice and voluntary action based upon intellectual insight into means and ends and the control of conduct by will dominating desire.

The fact, however, that Perry defines value as that which awakens interest does not militate against the fact that there are valuable things which awaken no interest and that many things which awaken interest are anything but valuable to the one who is interested in them, as Meinong pointed out long ago.

¹ Op. cit., pp. 115-116.

² *Metaphysica*, XII, Ch. 7. Translated by W. D. Ross. 1072^a.

³ *Ethics*, Part III, Prop. IX. Note translated by R. H. M. Elwes, 1901.

To all appearances the moth is intensely interested in the flame, but the flame is not valuable to but destructive of the moth. A diabetic child would be intensely interested in a box of candy, but could he have this box of candy which in Perry's sense is so valuable to him, it might well mean his death. An epileptic might be most interested in driving an automobile or flying an aeroplane, but should he attain such a Perry-value it might spell disaster to himself and others.

At all events we must take care not to make Perry-values into standards of conduct. When a diabetic goes to a restaurant he finds the bill-of-fare teeming with Perry-values. Fortunately, he knows by the instructions of his physician that the Perry-values are disastrous, so he exercises an Aristotelian choice and orders what reason dictates.

It is true that Perry-values give objects an economic value, for men often aim at the mere satisfaction of desire, and this satisfaction of desire is to them an object of value for which they are willing to pay. But such behavior is often a deordination. One who eats or drinks to excess, for example, is merely satisfying a desire, whereas the true value of eating and drinking is not the satisfaction of desire, but the well-being of the body.

Like others, Perry tries to scale his values, and remain consistently axiological in the scaling. Thus he says:

"An object, wine, is better than an object water: (1) if the interest in the wine is more intense than the interest in the water; (2) if the wine is preferred to the water; and (3) if the interest in the wine is more inclusive than the interest in the water."¹

By this he means that in judging things as better or worse we must take into consideration the intensity of the re-

¹ Op. cit., p. 616.

sultant satisfaction as did Bentham, its quality as did Mill, and finally must adjust our various desires to our own internal satisfaction. Thus in the case of the diabetic man who orders his dinner at a restaurant, he ordinarily makes an adjustment by which he gives up the carbohydrates he likes in order to continue living. But if he decides that he wants to commit suicide and die in diabetic coma, he has chosen according to Perry the better of two alternatives and his suicide is entirely in conformity with the standards of Perry's ethics.

In criticism it may be urged that one who attempts to harmonize his desires without regard to objective consequences is sooner or later going to meet with fatal disaster. But as soon as he takes into consideration objective consequences such as his own life and health or the well-being of others, he has given up an ethics founded purely on the psychology of desire. The good is no longer something subjective, but my life, my health, my mental and moral well-being. What constitutes our physical and mental and moral well-being, we know only too well by experience, is not manifested by our desires. It is necessary after all to follow Aristotle and judge the things we desire in the light of reason and choose them in accordance with the judgment that reason passes.

Perry rather wisely refrains from drawing the final moral consequences of his theory. They come out quite clearly in an article by Gardner Williams. According to Williams,

"feeling is the value fundamental. There is nothing either good or bad but feeling makes it so. . . . The heart of each man is the center of his own value universe."¹

¹ Gardner Williams. *Feeling as the basis of duty*. *International Journal of Ethics*, 1930, 40, p. 525.

In many matters men have similar feelings and so there is a certain uniformity in moral principles. But, says Williams:

"No two men ever feel exactly alike on any subject. Some conflict is inevitable, and some can only be settled by force. What is then right for one is wrong for another, and the arbiter is battle."¹

Williams does not shrink from the logical consequences of this emotional ethics.

"Can we say," he asks, "that a man whose interests run counter to those of the majority of decent law-abiding citizens is right in violating the moral rules which those people have adopted to express and protect their interests? I think that we must admit that, if he really wants to do what he does, and is willing to take the consequences of his acts, he is right from his own point of view. Right and wrong is always relative to some one point of view. It may be right from his point of view and wrong from some other. He may have an obligation to do what is genuine wrong to others and what these others have an obligation to try to prevent him from doing. A man ought to commit bigamy, forgery and arson if he wants to, and if he wants, or is indifferent to, the probable consequences of his acts; in other words, he ought to do it if it is to his interest in the long run."²

Such a view of ethics constitutes a kind of *reductio ad absurdum*. One could scarcely have tried to formulate more absurd consequences as a refutation of the whole movement than those just quoted from Williams. Well may we be

¹ L.c., p. 528.

² L.c., p. 530.

surprised that the final result of so much speculation and the thousands of pages that have been written on the theory of values all boils down to the simple maxim of conduct: Do whatever you please, but be careful.

When one comes to such conclusions as those of Gardner Williams he should question the principles from which they are derived. Ethics after all is a practical science and it is quite evident that a general adoption of this principle, so that all from childhood to adult years and the grave were told to lie, steal, murder, rape, plunder and burn whenever they felt like it and thought they could do so without being caught, would lead to disastrous consequences in the social order.

THE PHILOSOPHY OF VALUES

And so the philosophy of values ends where modern ethics began in the egoism of Thomas Hobbes: "Whatsoever is the object of any man's appetite or desire that is it which he for his part calleth good; and the object of his hate . . . vile and inconsiderable, . . . there being nothing simply and absolutely" good or bad.

If we can learn a lesson from the history of thought, then the history of ethical opinion from Hobbes to the present day points to the impossibility of developing an independent ethics and the utter insufficiency of egoism.

Hobbes was dissatisfied with his egoism and tried to limit it by an appeal to civil authority.

Bentham attempted to limit egoism by the principle of the greatest happiness of the greatest number. But he left undefined the concept of what makes one happiness greater than another.

Mill attempted to define this by an appeal to the judgment of the cultured few, but unless they have some principle governing their judgment one man's experience is as good as

another's, particularly when he himself must enjoy the fruits or suffer the consequences of his choice, and so we relapse again into the fundamental egoism of Hobbes.

Even Kant when he established his maxim of morality: Act as if the principle which governs your conduct would have to become a universal law of nature: had to give a reason why men should not be compelled by natural law to lie out of every difficulty. For if one should say, Why should not men lie out of their difficulties if they can? Kant could only appeal to the disastrous effects in the social order if no one could ever trust the sworn statements of another. And so the welfare of society becomes his ultimate standard. But how are we to define in all life's many situations the welfare of society and that of individuals, the sum of whose personal welfares constitutes the good of the social order?

And when the Austrian philosophers tried to define value they, too, were confronted with its constant relativity. Meinong really returned to the theory of Mill when he distinguished between *Wertgehalten-werden* and *Wertgehalten-werden-Können*. He thus made true value depend on the judgment of those who have adequate culture and experience.

And Ehrenfels takes refuge in the approval of the group in the midst of which one happens to be living.

A little reflection will make us realize that it is utterly impossible to establish a distinction between right and wrong by any study of the psychology of the emotions and that if this be what is meant, when one speaks of basing an ethics on psychology, there is no hope of ever finding a foundation.

Love and hate may be righteous or unrighteous, but as psychological phenomena they have the same mental characteristics and the same bodily resonance whether they are ethically justifiable or not. We shall always have to go out-

side of psychology to ascribe praise or blame to psychological phenomena.

Furthermore, all finite goods are relative. We may, if we will, say that *a good* is that which satisfies a want. But we must be careful to note that this is not the definition of *moral good*. It is merely an assertion of the truism that whatever is desired is desired as something which under some aspect is desirable. It all depends on circumstances whether this "good" which is desired is a moral good, a crafty piece of politics, a means of making money, or whatever else you may think of. What from the point of view of mere money-making might be well calculated to attain its end, might be a moral evil by various standards of morality. But whether it is good or bad all depends on whether or not it will attain the end, and whether or not the end is morally good or morally wicked cannot be decided without an objective extrapsychological standard of morality.

Let us now attempt to outline such a standard.

CHAPTER 27

THE ABSOLUTE GOOD

If that which is conditioned must suppose that which is unconditioned, and it does; and if the presence of effects leads us necessarily to the knowledge of a Cause Who is Himself uncaused, and it does; then there is an Eternal Absolute, and the Eternal Absolute must be the true and essential Good. Nothing can exist unless in some manner it ultimately owes its existence to Him. Furthermore, all beings capable of growth and development must, as they grow and develop, reveal more and more of the beauty and perfection of the Eternal Absolute on Whom they depend. Every being capable of knowing and willing wills that which is absolutely good when he wills to be more and more like the Eternal Good.

In so doing he wills his own perfection, but his perfection is measured by an objective standard. Furthermore, inasmuch as the mind by knowing attains the object of its knowledge, one who seeks to know God is striving to attain God Himself, the Eternal, Absolute and Essential Good.

“The end is that which anything intends to obtain by its action or motion . . . as a king (intends to obtain) a city by battle. God, therefore, is in this manner the end of things as something to be obtained by each thing in its own manner.”¹

And that takes place in this way: The more a man attains to his own perfection the more like God does he be-

¹ St. Thomas. *Contra Gentiles*, III, xviii.

come. The greater his virtue and wisdom the more like he is to Him Who is All Goodness and Infinite Wisdom. Consequently by virtue and wisdom a man is assimilated to God¹ and attains to God. Man's end, therefore, is God, Whom he possesses by knowledge and attains by willing himself to be, as far as it is possible, like unto God in His boundless goodness and infinite wisdom. As St. Thomas says:

"Anything is united more intimately to God by attaining in some manner to His very substance (which comes about when one knows something about the Divine Substance), than when it attains to some kind of likeness with God. An intellectual substance, therefore, tends to the knowledge of God as to a final end."²

Man's true end is the knowledge of God rather than the willing or choice or love of God. Were the willing itself man's end, there would be no essential difference in the one who willed or loved God and the one who willed or loved anything else except God. For two such individuals would not differ in their willing but in what they willed.

"True beatitude does not differ from false by reason of the act of will. For the will acts in essentially the same way in desiring, or loving, or delighting in whatever is proposed to it as the supreme good, whether truly or falsely. The difference in that which is proposed, whether truly or falsely, as the supreme good is to be found in the intellect. Blessedness, therefore, or happiness consists essentially in knowing rather than in an act of the will."³

If true happiness cannot consist in willing the good, much less can it consist in the sensory feelings and emotions asso-

¹ Cf. op. cit., III, xix. *Quod omnia intendunt assimilari Deo.*

² Op. cit., III, xxv.

³ Op. cit., III, xxvi.

ciated with our activities; for these also would be essentially the same whether the good chosen were a true or false good. Furthermore, as the end of eating is not the pleasure enjoyed in eating, but our physical well-being, so also, in regard to all other operations, the end is the good attained and not the resultant pleasures that we enjoy.¹

The true end of man, as we have pointed out,² must be the performance of that peculiar and specific operation which man alone of all things on the face of the earth can perform, and that is to know, understand and interpret what is to be known, and act in accordance with this knowledge.

His end, therefore, cannot be the honor and reverence that other men show him, for that is more truly his end on account of which he is rightly honored, that is, his own intrinsic merit. Furthermore, our true end is what we can attain to ourselves, by our own efforts. The honor shown us comes from others and not from ourselves; and one who is deserving of honor may go without it or even be dishonored by men.³

Nor can our true happiness consist in riches, for they are only means to other ends and may not always be attained or may be lost without any fault of our own.⁴

Man's true happiness cannot consist in health of body, for this is but a basis for the enjoyment of true life and doing something worth while in the world. This true life, and worth-while work, is our own true felicity rather than that which is only a means to its attainment.

Not even moral virtue constitutes our true happiness and end. For by virtue we are enabled to steer our own way in life between the Scylla and Charybdis of excess and defect of emotional enjoyments. This, too, is but a means to attain

¹ *Op. cit.*, III, xxvii.

² *Cf. supra*, page 3.

³ *Op. cit.*, III, xxviii.

⁴ *Op. cit.*, III, xxx.

our true life and do what is most worth while for us to do in the world.¹

Our true end is to do what, of all things on earth, man alone can do and that is to know the truth and attain to perfect wisdom. But this knowledge of the truth cannot be a mere philosophical knowledge of God, for the essential happiness of man must be that to which all men can attain and few can rise to the heights of philosophic speculation, nor does such knowledge of itself bestow perfect happiness on the mind of man.²

And so it becomes evident that perfect happiness is not attainable in this life by our natural powers. One can only avoid fatal blunders and seek the higher things rather than follow blind drives that lead to what is unworthy of human nature. Furthermore it is clear that no matter how much we know we always crave for a higher and a deeper and a better knowledge.³

St. Thomas, whose argument we have followed, then arrives by way of a philosophic postulate at the necessity of the human mind attaining to an ultimate knowledge of God, the Eternal and Infinite Truth, of such a nature as to give full satisfaction and perfect happiness. God is good, true and perfect Goodness; and the natural desires of the human heart, like all other things, come from Him, the Cause of causes. It is, therefore,

“impossible that a natural desire should remain unfulfilled, as it would were it impossible to attain to a knowledge of the Divine Substance, which all minds naturally desire. It is necessary, therefore, to say that it is possible for the intellect to behold the substance of God.”⁴

¹ Op. cit., III, xxxiv.

² Op. cit., III, xxxix.

³ Op. cit., III, xlvi.

⁴ Op. cit., III, li.

What God therefore holds out to us and makes us desire, even when we seek it outside Himself, and does not grant in this life, He must make possible of attainment in a life beyond the grave.

And so philosophy and ethics find their fullness and perfection in religion and God Himself gives life to the cold speculations of philosophic thought.

PART SIX

POINTS IN HISTORY

POINTS IN THE HISTORY OF MEDICAL ETHICS
POINTS IN THE HISTORY OF NURSING ETHICS
THE TEACHING OF ETHICS

PART SIX

POINTS IN HISTORY

CHAPTER 28

POINTS IN THE HISTORY OF MEDICAL
ETHICS

The code of Hammurabi lays down the earliest known laws of medical practice. The ethical principles which seem to lie back of its prescriptions are as follows:

A physician is entitled to an equitable pecuniary reward for the successful exercise of his functions. The amount of the fee is definitely stated for certain typical cases by which the fee in other treatments could be graded accordingly.

A physician should suffer a penalty if he injures his patient by careless practice and severe penalties are decreed, such as cutting off his fingers and various fines. In all probability the mere fatal outcome of the operation was not alone sufficient that a physician should incur the penalty. Thus it says:

“If a physician operate on a man for a severe wound with a bronze lancet and cause the man’s death; or open an abscess (in the eye) of a man with a bronze lancet and destroy the man’s eye, they shall cut off his fingers.”¹

Reason and justice prevailed then as now and no doubt if the physician could prove that he operated and the patient

¹ Robert Francis Harper. The Code of Hammurabi, King of Babylon about 2250 B.C. Chicago: 1904. Pp. 192. P. 79, § 218. By permission of University of Chicago Press, publishers.

died, but he did not *cause* the patient's death, he would not incur the penalty.

Hippocrates. Our earliest sources of information on Greek medicine are the Hippocratic writings, belonging to the fourth and fifth centuries before Christ. Among them there is the oath, which might well be the work of one hand. It is thought by some to belong to the later period of the collection. It gives us, however, our best insight into the medical ethics of pre-Christian times.

Though the oath is ascribed to Hippocrates we really do not know who wrote it. Nor do we know who was supposed to take it. Some think it was required of all the members of the Asclepiad guild. A passage in Plato's *Protagoras* (311B) refers to Hippocrates as a member of the Asclepiad family. But just who and what were the Asclepiadae is not definitely known. W. H. S. Jones suggests that they were a family, as the name indicates, and that this clan of hereditary physicians developed into a guild by the adoption of favored outsiders.¹ The increase and strengthening of a family by adoption was a common practice in ancient times.

The so-called "precepts of Hippocrates" are a compilation of various writers, like the collection of Hippocratic writings as a whole.

The following translation of the oath is that given by Jones in the Loeb Classical Library.

"I swear by Apollo Physician, by Asclepius, by Health, by Panacea and by all the gods and goddesses, making them my witnesses, that I will carry out, according to my ability and judgment, this oath and this indenture. To hold my teacher in this art equal to my own parents; to make him partner in my livelihood;

¹ Hippocrates with an English Translation and Notes. London and New York: 1923. Vol. I, p. xlv. (The Loeb Classical Library.) By permission of the Harvard University Press, Cambridge, Mass.

when he is in need of money to share mine with him; to consider his family as my own brothers, and to teach them this art, if they want to learn it, without fee or indenture; to impart precept, oral instruction, and all other instruction to my own sons, the sons of my teacher, and to indentured pupils who have taken the physician's oath, but to nobody else. I will use treatment to help the sick according to my ability and judgment, but never with a view to injury and wrong-doing. Neither will I administer a poison to anybody when asked to do so, nor will I suggest such a course. Similarly I will not give to a woman a pessary to cause abortion. But I will keep pure and holy both my life and my art. I will not use the knife, not even, verily, on sufferers from stone, but I will give place to such as are craftsmen therein. Into whatsoever houses I enter, I will enter to help the sick, and I will abstain from all intentional wrong-doing and harm, especially from abusing the bodies of man or woman, bond or free. And whatsoever I shall see or hear in the course of my profession, as well as outside my profession in my intercourse with men, if it be what should not be published abroad, I will never divulge, holding such things to be holy secrets. Now if I carry out this oath, and break it not, may I gain for ever reputation among all men for my life and for my art; but if I transgress it and forswear myself, may the opposite befall me.”¹

Jones calls attention to the fact that he who takes the oath of Hippocrates must not only tell no tales about his patients' affairs but avoid tale-bearing of all kinds. It is a wise precaution. Develop the general attitude and the specific problems will be taken care of automatically.

¹ *Op. cit.*, pp. 299-301.

Galen. Galen's (131-201 A.D.) little work *ὅτι ὁ ἀριστος ἰατρὸς καὶ φιλόσοφος* "That the best physician is also a philosopher," is an original treatise on medical ethics. It takes the position that one who is to be a good physician must be acquainted with all philosophy: logic, the philosophy of nature and ethics. His argument runs as follows: One who is going to understand the nature of the human body, diagnose its disorders and apply appropriate remedies must be thoroughly trained in logic that he may reason correctly and in science that he may have the data upon which to reason. In order to do this he must devote a lifetime to study and investigation, but this he will never do unless he despises riches and leads a temperate life.

"And so it necessarily follows that a physician will have all the other virtues. For all the virtues are connected with one another. Nor can it come about that you may have any one virtue whatsoever without attaining at the same time all the others as if they were bound together by the same rope."¹

MEDICAL ETHICS IN THE PATRISTIC AND MEDIEVAL PERIODS

The oath of Hippocrates, rather than the treatise of Galen, became the tradition of medical ethics and was rewritten in various forms often with a Christian coloring.

It was in Christian times, however, that the dignity of professional conduct was associated with the service of humanity in the person of the poor. The oath of Hippocrates demands honor and upright conduct on the part of the physician, but it envisages no obligation to treat the poor.

Owing to the fact that in the middle ages physicians were

¹ ΓΑΙΗΝΟΥ ὅτι ὁ ἀριστος ἰατρὸς καὶ φιλόσοφος. 2nd Ed. edited by Iwanus Mueller. Erlangen: 1875. P. 27.

often clerics or monks and that the hospital of the town was associated with the infirmary of the monastery, the idea of treating the poor with as much kindness and attention as the rich made its appearance in the medieval code of medical ethics.

St. Benedict in his *Regula monachorum* laid down the following regulations:

“Before all things and above all things care is to be had of the sick, that they be served in very deed as Christ Himself for He said: ‘I was sick, and ye visited Me.’ And, ‘What ye have done unto one of these little ones, ye have done unto Me.’ And let the sick themselves remember that they are served for the honor of God, and not grieve the brethren who serve them by unnecessary demands. Yet must they be patiently borne with, because from such as these is gained a more abundant reward. Let it be, therefore, the Abbot’s greatest care that they suffer no neglect. And let a cell be set apart by itself for the sick brethren, and one who is God-fearing, diligent and careful, be appointed to serve them.”¹

Of guests St. Benedict wrote:

“Let all guests that come be received like Christ Himself, for He will say: ‘I was a stranger and ye took Me in. . . .’ Let special care be taken in the reception of the poor and of strangers, because in them Christ is more truly welcomed.”²

Owing to these passages, the monastery became the home of the aged, the hospital of the sick and the guest-house of

¹ The Rule of St. Benedict: edited with an English translation and explanatory notes by D. Oswald Hunter Blair. 3rd Ed. Fort Augustus: 1914. Ch. 36, pp. 102-103.

² Op. cit., Ch. 53, pp. 133 and 135.

travelers. The very principle of caring for Christ in the person of the sick and the stranger forbade the asking of money for any of these services. It was natural, therefore, that when physicians became monks they would write into the code of medical ethics that the poor were to be cared for without asking any fee whatsoever.

The Benedictine tradition was merely the Christian tradition. Thus an ancient Latin inscription tells of the levite Dionysius who treated *all* who came to him gratis:

“Here lies the levite Dionysius who fulfilled the functions of the honest art of medicine . . . he despised the sordid gain of a fee . . . and gave all things free to the sick who came to him.”¹

One of the medieval developments of the Hippocratic oath was due to Constantine of Carthage called the African, a Benedictine *monachus medicus* of the eleventh century. Constantine's code demands that the physician teach his art free of charge to all who are worthy to learn it, but that he try to exclude the unworthy from the profession of medicine; that he should not practice his art of healing to gain money and that he should not give more attention to the rich than to the poor; that he should not teach how to bring on an abortion; that he should keep to himself the secrets of the patient; that he should flee luxury and keep himself from the pleasures of the world and drunkenness; that he should not disdain to visit the sick in order that his experience may ever grow;² “that he should be pious, humble, kind, gentle and that he should seek the help of God.”³

¹ Janus Gruterus. *Inscriptiones antiquae*. Amsterdam: 1707. P. 1173, § 3.

² Such advice shows that the author shared the empiricism of Hippocrates and could not have been a blind follower of Galen as all physicians of the middle ages are said to have been.

³ Paris medical, 1920, 38, 693-694. The dependence of this code on Hippocrates, Galen and St. Benedict will be evident from the above quotations from these authors.

The concept of looking upon medicine as primarily a service of humanity rather than a means of making money we owe to the middle ages and not to Hippocrates. The great Greek physician binds one who knows the art of medicine to teach it free of charge but not to treat the poor without remuneration.¹

MEDICAL ETHICS IN THE SEVENTEENTH AND EIGHTEENTH CENTURIES

The tradition of the middle ages that a physician owed a duty to God and suffering humanity was continued in modern times.

Thomas Browne, a seventeenth century physician, some years before 1642 penned, as he said, "in my private study as an exercise for myself" a work he entitled *Religio medici*.²

¹ On the Christian additions to the fundamental principles of Hippocrates, see:

Adalberto Pazzini. *Metamorphosis* (Saggio critico sull' evoluzione dell' etica medica. Dal codice di Hammurabi al *De Christiana ac tuta medendi ratione*). *Revista di Storia dell Scienze Mediche e Naturali*, 1931, 13, 64-88; 117-153. Valuable for the indications to medieval literature. References inadequately given. See particularly pp. 136 f.

The following are also interesting:

Ernst Hirschfeld. *Deontologische Texte des frühen Mittelalters*. *Arch. f. Gesch. d. Med.*, Leipz., 1928, 20, 353-371. Hirschfeld gives several interesting texts, furnishing us with some idea of the principles of medical ethics in the early middle ages. He attributes them to the fifth or sixth centuries. Evidently the medical profession was held in such high esteem at the time of their composition that a physician owed it to the dignity of his profession to maintain a lofty personal moral standard. "*Ignominiosus ambulare non debet eo quod non decet medico in culpa deprehendi nec in confusione erubescere presentia populi sui*" (p. 362). Poor and rich are to be loved with an equal affection "*Sed omnes pauperes atque dives uno animo diligantur*" (p. 363).

Paul Diepgen. *Ein mittelalterlicher Traktat über die Gewissenspflichten des Arztes und Fragen für seine Beichte*. *Med. Klin.*, Berl., 1920, 16, 1304-1305.

James J. Walsh. Early chapters in medical surgical ethics. VI. The medieval period. *Hospital Progress*, 1921, 2, 403-406.

The following articles in St. Thomas bear directly or indirectly on the problems of medical ethics: *Summa Theologica*. 2. 2. Q. LXIV, a 8; LXV, a 1; LXXI, a 1, a 3, ad 1^{um}.

² *Religio Medici*. The Eighth Edition with Observations by Kenelm Digby. London: 1682. Pp. 371.

The work consists of two parts. The first is an outline of his religious opinions; the second is a treatise on charity and may be looked upon as an expression of a physician's fundamental ethical attitude towards life and his profession. Thus he says: "I study not for my own sake only, but for theirs that study not for themselves."¹ But he nowhere touches on the specific duties of a physician.

A copy of the manuscript he had written for himself got out of his possession, was translated into Latin by one John Merryweather and was printed at Strassburg with additions and changes as suited the editor.²

In 1719 Joh. Samuel Carln, the court physician at Isenburg and Stollberg, published his *Decorum medici von denen Machiavellischen Thorheiten gereinigt*.³ It goes into the ethics of the many situations in which the physician is placed and deduces the care he should take of his patient from the love of God and our neighbor. It is a curiously written book, showing the condition of an educated German physician's mastery of the language of his country in the early eighteenth century. He evidently was unfamiliar with the German equivalents of many ordinary words and is ever introducing Latin, French or Italian words and phrases or compounding German words by introducing a foreign word on which he hangs a German termination.

In Frederick Hoffman the middle age tradition of serving God and helping the poor found clear expression. His Latin treatise *Medicus politicus*⁴ is an outline of the fundamental moral duties of a physician along with sound medical advice on such topics as taking care lest one infect oneself in attending a patient with a contagious disease. It opens with the words:

¹ Op. cit., p. 141.

² *Religio Medici cum Annotationibus*. Argentorati: 1677. Pp. 440 plus indices.

³ Büdingen: 1719. Pp. 174.

⁴ *Lugduni Batavorum*: 1738. The work was reprinted in 1746 and translated into French. *La politique du médecin*. Paris: 1751.

"A physician is a Christian. A Christian is one who not only understands the history of Christian belief concerning what is to be believed and done; but also shows in his life what and how he believes. He not only confesses Christ with his mouth, but also imitates Him by his deeds. And so a physician as a good Christian necessarily practices kindness, particularly towards the poor to whom he never denies free service."¹

In 1770 Dr. John Gregory, Professor of Medicine at the University of Glasgow, published his *Lectures on the Duties and Qualifications of a Physician*.² It is an excellent little work on medical ethics, etiquette and education. It deals with the virtues which should characterize a physician, laying special stress on sympathy. In various passages one seems to trace the source of some of Percival's ideas. Percival refers to Gregory's work as no doubt in the hands of every physician. It went through several editions and was translated into French.³

In the United States we find an early landmark in medical ethics in the establishment of the Massachusetts State Medical Society in 1781. Its constitution is said to have "had several sections devoted to ethical principles and practice."⁴

Benjamin Rush (1745-1813), one of the signers of the Declaration of Independence, the Surgeon-General of the Middle Department of the Army of the Revolution,⁵ the

¹ Op. cit., pp. 1-2.

² London. Printed for W. Strahan and T. Cadell, successor to Mr. Millar, in the Strand. 1770. Pp. 182.

³ Id., 1772, pp. 238; Philadelphia, 1817, pp. 232; *Discours sur les devoirs, les qualités et les connaissances du médecin*, Paris, 1788, pp. xxxvi + 342.

⁴ Frank Smithies. On the origin and development of ethics in medicine and the influence of ethical formulæ upon medical practice. *Annals of Clinical Medicine*, 1925, 3, 573-603. P. 592.

⁵ Dr. Benjamin Rush, Surgeon-General of the Middle Department of the Army of the Revolution. Editorial. *J. Ass. Mil. Surg. U. S.*, Carlisle, Pa., 1905, 16, 439-442.

leading medical practitioner and teacher of his day, was already lecturing on medical ethics in 1789.¹ Because he received his degree from the University of Edinburgh, it has been thought² that his ideas on medical ethics were derived from Thomas Percival. He graduated from Edinburgh in 1768 and in 1769 became Professor of Chemistry in the College of Philadelphia. He must therefore have left Edinburgh some twenty-three years prior to the time (1792) that Percival composed the first chapter of his *Medical Ethics*.

That Benjamin Rush was interested in moral problems is evident from his *Essays*.³ His specific contribution to medical ethics antedates the publication of Thomas Percival's *Medical Ethics* by fourteen years. It is entitled *Observations on the Duties of a Physician* and is contained in an appendix to his *Medical Enquiries and Observations*.⁴ It was a lecture delivered to his students as the conclusion of his course of instruction in general medicine, and gives a good deal of advice appropriate to the period of American history just following the Revolution as well as moral suggestions of general value, for example:

"Make it a rule never to be angry at anything a sick man says or does to you." (P. 250.)

¹ For the biography of Benjamin Rush see:

AUTOBIOGRAPHY edited by Louis Alexander Biddle. A Memorial Containing Travels Through Life or Sundry Incidents in the Life of Dr. Benjamin Rush. Written by himself. Also Extracts from his Commonplace Book, etc. Lanoraie: 1905. Pp. 262.

SAMUEL D. GROSS (Editor). Lives of Eminent American Physicians and Surgeons. Philadelphia: 1861. Pp. 17-85. Signed by Samuel Jackson.

HARRY G. GOOD. Benjamin Rush and His Services to American Education. Berne, Indiana: 1918. Pp. x + 283. A good biography which delves into original sources.

² Smithies, l.c., p. 592.

³ Essays Literary, Moral and Philosophical. Philadelphia: 1798. Pp. 366.

⁴ Philadelphia and London: 1789. Pp. 243-261.

Practical advice on the business side of the physician's life throws a light on customs prevalent in the United States at the end of the eighteenth century, for example:

"It is the duty of a physician to inform his patient of the amount of his obligation at least *once* a year."
(P. 253.)

But should the patient be in financial stress

"delicacy and humanity require, that he should not know the amount of his debt to his physician, till time had bettered his circumstances." (P. 254.)

He quotes Boerhaave's saying that the poor "were his best patients, because God was their paymaster" (p. 254). This reference, as we shall see, finds expression in the Boston Medical Association's 1808 "Code of medical police," perhaps because some of the members had been students of Benjamin Rush. It is interesting to note that

"the last act of Dr. Rush's life was an act of charity and (the) last expression which fell from his lips was an injunction to his son, 'Be indulgent to the poor.'"¹

He urges his students to make an autopsy whenever possible and, as if it were a matter of equal importance, to devote themselves to the study of psychology.

"Permit me," he says, "to recommend to you further, the study of the anatomy (if I may be allowed the expression) of the human mind, commonly called metaphysics." (P. 255.)

This psychological interest of Benjamin Rush led him to become the father of American psychiatry. He published in 1812 his *Medical Enquiries and Observations upon the*

¹ Autobiography, op. cit., p. 130^a.

Diseases of the Mind.¹ This was the first textbook of psychiatry published by an American physician.²

He may also be said to be the pioneer occupational therapist.

"In those cases," he says, "in which the body cannot be employed, the mind should be kept constantly busy. Mr. Cowper often relieved his melancholy by reading novels. Hence he has well said

" 'Absence of occupation is not rest

A mind quite vacant is a mind distressed.' " (P. 119.)

Besides his *Observations on the Duties of a Physician*, Benjamin Rush contributed a lecture *On the Vices and Virtues of Physicians*.³ These he sums up under the three heads: (1) as they relate to the Supreme Being; (2) to their patients and (3) to their professional brethren. But in this section he passes over the vices of physicians to discuss their virtues in general. His lectures *On the Pains and Pleasures of a Medical Life* (Nov. 7, 1803), *On the Means of Acquiring Business and the Causes Which Prevent the Acquisition, and Occasion the Loss of It in the Profession of Medicine* (Nov. 11, 1807), *On the Utility of a Knowledge of the Faculties and Operations of the Human Mind, to a Physician* (Nov. 21, 1805), *On the Duties of Patients to Their Physicians* (Nov. 7, 1808), all bear more or less directly on the moral problems of medical practice. The latter lecture gives us no doubt Ben-

¹ Philadelphia. Pp. 367.

² Prior to that we have a couple of inaugural dissertations after the model of the German University such as: Edward Cutbush. *An Inaugural Dissertation on Insanity*. Philadelphia: 1794. Pp. 53. Also: Theodore Romeyn Beck. *An Inaugural Dissertation on Insanity*. New York: 1811. Pp. 40.

³ Delivered Nov. 2nd, 1801. In: *Sixteen Introductory Lectures to Courses of Lectures upon the Institutes and Practice of Medicine*. Philadelphia: 1811. Lecture V. Pp. 120-140.

jamin Rush's own attitude in caring for his patients and one can see therein his own intense personal interest in suffering humanity.

Smithies makes the following statement :

"In 1794 Dr. Benjamin Rush lectured on the duties of a physician. This was prior to the issuance of the Percival Code in book form, but, in all probability, Rush and the Philadelphia College of Physicians and Surgeons secured their main inspiration from the well-known precepts of Percival, already in full operation at the Manchester Infirmary."¹

It is hard to see why Smithies picks the year 1794 for the commencement of Rush's lectures on medical ethics. His *Observations on the Duties of a Physician* was printed in 1789, fourteen years prior to the publication of Percival's *Medical Ethics*.

In the preface to his *Medical Ethics* Percival says :

"The first chapter of the following work was composed in the spring of 1792, at the request of physicians and surgeons of the Manchester Infirmary: and the substance of it constitutes the code of laws by which the practice of that comprehensive institution is now governed."

But at least three years previously Rush had lectured on medical ethics to his students.

That the scientific work of Percival was known to Rush seems probable from the fact that

"in the course of the year 1787, Dr. Percival was elected member of the American Philosophical 'Society of Philadelphia' in consequence of the recommendation

¹ Smithies, l.c., p. 592.

of his friend Dr. Franklin, the illustrious President of that body.”¹

But the code of ethics laid down for the Manchester Infirmary in 1792 cannot be numbered among the sources of Benjamin Rush's *Observations on the Duties of a Physician* printed in 1789.

Was Rush influenced by personal contact with Percival when he studied at Edinburgh in 1766-1768? This is unlikely, for Percival, having received his diploma at Leyden in 1765, and after residing at Warrenton for a couple of years, settled down as a young physician in Manchester in 1767.

Benjamin Rush's interest in medical ethics, like that of Thomas Percival, was native and arose out of a deep sense of his own moral obligations and a desire that the medical profession should share his own high standards of morality.

That this native interest may have been stimulated by John Gregory is quite possible, for Gregory was lecturing at the University of Edinburgh² during Rush's stay and in 1770 published his *Lectures on the Duties and Qualifications of a Physician*.

The impression, however, that one gets from reading various modern studies on the history of medical ethics is that it had its real beginnings in Thomas Percival's *Medical Ethics*.³ In the preface of this work one sees that this is not the case, for he thus gives an account of some of his sources.

He quotes⁴ from the preface to Lord Bacon's *Elements of the Common Law of England* in expressing the concept

¹ Memoirs of the Life and Writings of Thomas Percival, M.D., prefixed to the first volume of: The Works, Literary, Moral and Medical. 1807. Vol. I, p. lxxxii.

² The Practical Course delivered by Dr. John Gregory at Edinburgh, 1768-69. MS. in the Surgeon-General's Library at Washington, D. C.

³ Manchester: 1803. Pp. xvi + 246.

⁴ Op. cit., p. 3.

of the ethical standards of professional practice. He refers to Reverend Thomas Gisborne's *Enquiry into the Duties of Men* as "the most complete system extant of *Practical Ethics*."¹ Having already told how the first chapter of his work had been composed in the spring of 1792 and that its substance had been the code of laws by which the Manchester Infirmary was governed, he says that Gisborne's chapter refers to his code and that "it treats so largely of the duties of the faculty, as to seem, at first view, to supersede the use of the present manual."²

He says that "the same remarks may be applied to the excellent lectures of Dr. Gregory." He refers to the Statuta Moralia of the College of Physicians but points out that they were inadequate to "the existing sphere of medical and chirurgical duty."

He tells how the distribution of the "unfinished impression" of his work on *Medical Ethics* had stimulated publications by Sir G. O. Paul, Bart., and Dr. Clark of Newcastle-upon-Tyne.

Thomas Percival was interested in ethics for the sake of humanity in general as well as for elevating the dignity of the medical profession, as is witnessed by his work, *A father's instructions adapted to different periods of life from youth to maturity and designed to promote the love of virtue, a taste for knowledge and attentive observation of the works of nature*³—a very interesting book with many little stories replete with meaning.

Codes of medical ethics were undoubtedly formulated long

¹ Apparently in 1794 Thomas Gisborne published his work, *An Enquiry into the Duties of Men in the Higher and Middle Classes of Society in Great Britain*. A fifth edition appeared in 1800 (London). 2 Vols. Pp. xv + 461; xii + 540. It has the character of a work of good advice to members of the various professions.

² Op. cit., p. 6.

³ The preface to this work was written in August, 1775, and it is found in the first volume of his works (London: 1807).

prior to the work of Percival. Thus Sir George Baker, writing his acknowledgments to Percival for the first chapter of his work on *Medical Ethics*, said:

"In our statute book at the College of Physicians, we have a chapter '*De Conversatione Morali*,' some parts of which are similar to your Medical Jurisprudence; but your laws are fuller and more comprehensive."¹

MEDICAL ETHICS IN THE UNITED STATES IN THE NINETEENTH CENTURY

The Boston Medical Association was not long in building on the foundations laid by Gregory, Rush and Percival. On the first Wednesday of March, 1807, they appointed a committee to propose a "code of medical police."² The committee reported that

"having examined the different publications of Gregory, Rush and Percival upon this subject, they first selected from them such articles, as seemed most applicable to the circumstances of the profession in this place."³

Most of their report is concerned with medical etiquette, but the following extracts are of general ethical interest:

"The *esprit du corps* is a principle of action, founded in human nature, and when duly regulated, is both rational and laudable. Every man who enters into a fraternity, engages by a tacit compact, not only to submit to the laws, but to promote the honor and interest of the association, so far as they are consistent with morality and the general good of mankind. A phy-

¹ May 9, 1794. The Works Literary, Moral and Medical of Thomas Percival. Vol. I, p. clxxxvii.

² An old spelling for policy.

³ Boston Medical Police. (Boston Medical Association.) Boston: 1808. Printed by Snelling and Simons, Devonshire Street. Pp. 11. (In: Baily Pamphlets, III, No. 6.) P. 3.

sician, therefore, should cautiously guard against whatever may injure the general respectability of the profession and should avoid all contumelious representations of the faculty at large, all general charges against their selfishness or improbity, or the indulgence of an affected or jocular skepticism, concerning the efficacy and utility of the healing art.”¹

The medieval tradition of tender care for the poor is continued.

“Gratuitous services to the poor, are by no means prohibited; the characteristical beneficence of the profession, is inconsistent with sordid views and avaricious rapacity. The poor of every description should be the objects of our peculiar care. Dr. Boerhaave used to say, they were his best patients, because God was their paymaster.”²

The clergy were associated with the members of the families of physicians in a right to gratuitous service.

“The clergymen of the town, and all members of the medical profession, together with their families, should be attended gratuitously” but “such of the clergy from abroad, as are qualified by their fortunes or incomes to make a reasonable remuneration for medical attendance, are not more privileged than any other order of patients.”³

In 1846 there appeared *A system of medical ethics adopted by the Medical Society of the State of New York*.⁴ Though it was printed in 1846 a preliminary note says:

¹ L.c., p. 8.

² L.c., pp. 8-9.

³ L.c., p. 9.

⁴ Albany: Printed by J. Munsell, 1846. Pp. 16.

"The following code of Medical Ethics was reported to the Society in February, 1823 . . . and unanimously adopted. It is now reprinted by order of the Society with a few alterations."

The code has a number of interesting points, e.g.,

"To a Christian minister alone or to some other authorized person, therefore, appertains the task of disclosing to the patient his alarming situation, and preparing him to meet with composure that event, which to his friends may appear inevitable." (P. 8.)

It quotes Boerhaave on the treatment of the poor, showing thereby perhaps the influence of the earlier Boston code. Ultimately, as we have seen, this goes back to the middle ages. But the code also appeals to the Oath of Hippocrates on the sacred obligation of the medical student to his preceptors. It compares the obligation of medical secrecy to that of the Catholic confessional (p. 16), but inaccurately.

The American Medical Association was founded on May 5, 1846, and in the following year published a national code of medical ethics. Since that time various works on medical ethics have appeared in this country.

MEDICAL ETHICS IN GERMANY IN THE NINETEENTH CENTURY

The well-known historian of medicine Julius Pagel published his *Medicinische Deontologie* in 1897. The second chapter of this is a valuable history of medical ethics. The work first appeared as a series of articles in 1896 in the *Allgemeinen medicinischen Central-Zeitung* (Nos. 23-41). It seemed particularly appropriate to publish it after the Berlin-Brandenburg Medical Society (*Aerztekammer*) expressed the wish that the teaching of medical ethics should

be officially introduced in the university as a part of the medical students' regular training. Pagel's work contains a good deal of wise counsel but does not enter into the science and philosophy of conduct.

MEDICAL ETHICS IN FRANCE IN THE NINETEENTH CENTURY

As early as 1818 Bienvenu attempted in a doctorate thesis to outline the virtues which should qualify a physician for his work.¹

The first work of importance on medical ethics which was published in France was apparently the *Déontologie Médicale* of Max Simon that appeared in 1845. This we learn from an article in the first number of the *Revue de Déontologie* which came out in October, 1903. This periodical apparently became extinct about August, 1905.² It was the organ of the *Association corporative des Étudiants en Médecine de Paris*. In its last issues it had given up the discussion of ethical problems and devoted itself exclusively to the question of the reform of medical education. M. Wicart in a brief paragraph in the first issue summarizes the previous history of medical ethics in France.

"In 1845 Max Simon wrote a *Déontologie Médicale*. Dechambre in 1883 published *Le médecin, devoirs privés et publics*. Juhel-Rénoy in 1892 discussed *La vie professionnelle et devoirs du médecin* and M. Brouardel threw light on certain questions, ever of a touchy character, in various publications, such as: The professional secret, Medical responsibility, The practice of medicine and charlatanism."³

¹ Pierre Bienvenu. *Des qualités morales du médecin*. Paris: 1818. Pp. 65. (Theses, Vol. 137, No. 71.)

² The Union List of Serials has no further entry after 1905.

³ *Revue de Déontologie*, 1903, 1, p. 20.

In 1900 there was held a Congress of Deontology in Paris. In fact all over Europe at this time a lively interest had been awakened in the moral problems of medical practice. Professors of medical jurisprudence defended the universities against the charge of neglecting ethics by maintaining that ethical problems had always formed a part of the course in medical jurisprudence.

Throughout the nineteenth century a number of works on medical ethics appeared in France as well as in England and the United States. Some of these will be found cited in the appended annotated bibliography.

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— *Six Introductory Lectures to Courses of Lectures upon the Institutes and Practice of Medicine.* Delivered in the University of Pennsylvania. Philadelphia: 1801. Pp. 168.

The lecture on the character of Dr. Sydenham may be looked upon as an outline by example of the physician's moral ideal. It was delivered December 9, 1793.

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CHAPTER 29

POINTS IN THE HISTORY OF NURSING ETHICS

PATRISTIC AND MEDIEVAL TIMES

Prior to Christianity¹ there is no clear evidence of hospitals for the care of the sick. Poor and rich were visited in their homes by the physician.² Hospitals commenced as shelters for strangers where the sick received special attention. Only later on was there a real difference between the xenodochium, the gerocomium and the nosocomium. The care of the strangers, the sick, the aged and the poor at first devolved upon the bishop and his clergy. The deacons, assisted by deaconesses, were the first nurses. With the conversion of Constantine, the xenodochia as special institutions began to appear in Constantinople. The rule of St. Basil refers in various places to the care of the sick.

The care of strangers, the poor and the sick became a duty imposed by canon law on the bishops. Thus the *canones arabici* ordain as follows: Let houses, commonly termed xenodochia and hospices, be set apart for strangers, the poor and the sick in every city (Can. lxxv, Mansi, Conc. ampliss. coll., Vol. II, Col. 1006).

As monasteries developed it became the custom for every one of them to have its guestmaster (ξενοδόχος) to look after

¹ The following statements on the origin of the public care of the sick in patristic times are drawn from the article *Hôpitaux, Hospices, Hôtels* in the Dictionnaire d'archéologie chrétienne et de liturgie. Paris: 1924. One will find there the references to the original sources on which they are based.

² Cf. e.g., Epidemics, by Hippocrates.

the needs of strangers; but these were under the ultimate jurisdiction of the bishop. A general econome in large centers cared for the whole system of public charities. The personnel engaged in this extensive service did not consist entirely of clerics and religious, but included also what we would now term lay nurses and social workers. These were known in Alexandria as *parabolani*. Theodosius the Young reduced their number by law to six hundred. They were supposed to devote themselves strictly to duty and not frequent the public games or appear in court without special reason.

Fabiola, towards the end of the fourth century, established the first public hospital in Rome, which must of course have had a body of nurses of some kind.

With the advent of Benedictinism the tradition of oriental monasticism was continued in the Occident.

Codes of "ethics for nurses" abound in the texts of the middle ages. Naturally these codes are suited to the conditions of the time, but it is a great pity that their religious spirit has not descended to the modern trained nurse.

When hospitals of various kinds commenced to multiply they were in general under episcopal authority. They needed attendants and there were not lacking men and women who devoted their lives to the care of the sick and the poor. It was necessary for them to have some kind of a rule of conduct, nor was it possible for men and women to devote their lives to this work without a religious motivation. Neither could the sick be cared for in the spirit of medieval charity by one whose life was not dominated by a religious spirit. Hospitals or infirmaries attached to the great monasteries had *ipso facto* the rule of St. Benedict as their code of conduct. But the vast number of hospitals were eventually under episcopal jurisdiction, and when a bishop of the middle ages wanted a rule to govern the hospital attendants

under his jurisdiction he naturally turned to the rule of St. Augustine and added on to that such regulations as were particularly concerned with those who cared for the sick.

The rule of St. Augustine was written because the nuns in a convent of which his sister had been prioress rebelled against the authority of her successor. He took the occasion to write them a letter and lay down a general rule of life to govern them in their convent. This letter¹ constitutes the rule of St. Augustine. Throughout the middle ages it was given by church authority to various groups of individuals or adopted by those who wanted to live together and do some form of charitable work.

Since this rule constituted the moral and spiritual background of the medieval nurse, we submit the following translation of its opening passages to give some idea of the ideals of the nurse in medieval times.

"These are the things which we command those to observe who belong to the monastery.

"First, by reason of the fact that you are brought together in one body, that you dwell in the house in concord so that you have one heart and one mind in God. And you shall call nothing your own but possess all things in common. Let food and clothing be distributed to each one of you by your superior: not equally to all for the necessities of all are not the same, but to each one according as he has need. For so we read in the Acts of the Apostles: They had all things in common and distribution was made to each according as he had need. (Acts iv, 32, 35.) Those who had anything when in the world, should freely donate it to

¹ Migne. *Patrologia Latina*. XXXIII, 958-965. *Epistolarum Classis* III, ccxi. A translation is available in: *The Nicene and Post-Nicene Fathers*. First series edited by Philip Schaff. New York: 1907. Vol. I. Pp. 563-568.

common use when they have entered the monastery. Those, however, who had nothing should not seek in the monastery what they did not have outside. Nevertheless their (human) weakness is to be relieved by what is necessary even though what is given bears the character of that poverty they endured when they lived outside and could not find the bare necessities. Therefore they are not now to look for comforts because they have found food and clothing such as they were unable to obtain outside.

“Nor should they proudly hold up their heads because they associate with those whom they would not dare to approach when outside. But let them lift up their hearts and not seek earthly things lest monasteries should be of spiritual value to the rich but not to the poor, for the rich would then be humbled but the poor puffed up with vanity. But on the other hand let those who seemed to be something in the world, show no aversion to their sisters who came into their holy companionship from poverty. Let them rather rejoice in the fact that they are associated with the poor than busy their minds with the thought of their wealthy parentage. Let them not think highly of themselves if from their possessions they gave something to the common life, lest they offend even more by pride in their possessions because they distributed them to the poor in the monastery than if they enjoyed them in the world. Forsooth every other type of iniquity is exercised in the production of evil deeds; pride, however, insinuates itself into good deeds in order that they may be destroyed. And what doth it profit one to scatter one’s possessions by giving them to the poor and become poor oneself, if the miserable soul is made more proud by despising wealth than it would by possessing it? Let, therefore, all live to-

gether with one mind and one heart and do you honor God who dwells in each one of you because you have been made His temple.

"Be faithful to prayer at the hours and times appointed. Let no one do anything in the oratory except that for which an oratory is made and from which it derives its name, so that should any wish to pray outside the appointed hours if they have time, the others who wanted to do something else in the oratory would not be a source of disturbance to them. When you pray to God with psalms and hymns ponder in your heart what you express with your voice. And do not sing anything but what you read is to be sung. For what is not written so that it may be sung is not sung.

"As much as your health permits, conquer your flesh by fast and abstinence of food and drink. When, however, one cannot fast she should not take anything to eat between meals, unless she is sick. When you come to the table and until you get up from the table listen to what is read according to custom without any noise or controversy. You should not merely swallow food with your throats but let your ears also take in the word of God."

In one of the most celebrated hospitals of the middle ages, Roncevaux, this letter of St. Augustine was the only rule laid down and had neither commentary nor addition.¹

Léon Le Grand is of the opinion that written codes outside the rule of St. Augustine were rare if they existed at all prior to the twelfth century. One had up to that time only customs and oral tradition and the writings of the

¹ See: Léon Le Grand. *Les Maisons-Dieu. Leurs statuts au XIII^e siècle.* *Revue des questions historiques.* 31^e année. Nouvelle série, Vol. XVI (LX^e de la collection), 1896, p. 98. This article is an invaluable study of the sources for the history of hospitals in the middle ages.

Fathers. The earliest of the written codes was that promulgated by Raimond du Puis for the Hospital of St. John at Jerusalem in the second quarter of the twelfth century. Later codes draw extensively on the rule laid down by Raimond du Puis.

The moral and spiritual life which they enjoin is that of a religious devoting himself or herself entirely to the service of the sick and poor for the love of God. They must observe the three vows of religion:

“Chastity and obedience, that is, (to) whatever is commanded them by their masters; and to live without possessing anything of their own (*sine proprio vivere*); and let them not seek as their due anything more than the bread, water and clothing which are promised them.”¹

They are to go out, not alone, but in twos and threes, and in all their behavior to act “as becomes their holiness.” They must avoid luxury of dress and if any brother has a quarrel with another and disturbs the peace of the house, he must fast for seven days, on Wednesday and Friday on bread and water, eating on the floor without table or napkin. If he hits another brother the fast is to be prolonged for forty days.

If he gives to a secular money destined for the poor he is to be expelled from the society.

At table all eat in silence.

When a sick person is received he first confesses his sins and receives Holy Communion (*religiose communicetur*). He is then carried to his bed and there he is to be treated, as far as possible, as the Lord of the house. His meals are

¹ Quoted from the statutes of the Hospital of St. John at Jerusalem, in: Léon Le Grand. Statuts d'Hôtels-Dieu et de Léproseries. Recueil des textes du XII^e au XIV^e siècle. Paris: 1901. P. 8.

to be brought to him every day before the brethren have theirs.

This injunction to treat the sick person as the Lord of the house derives from the Gospel in which Christ taught us to see His own Self in the person of the sick and the poor. It is repeated again and again in these medieval nursing codes. Its concept forms the essence of the medieval name of a hospital: *domus Dei*, *hôtel-Dieu*, *maison-Dieu*.

In the statutes of Montdidier and Amiens it is laid down that the brethren must obtain for the patient anything he may ask, if it can be gotten and is not injurious to him, and this is to be kept up until he is restored to health.

The same code lays down that the sick are never to be left alone without an attendant.¹

Le Grand points out that these codes were not dead letters but that, for instance, an investigation made in 1266 showed that at d'Aubrac "hospitality" was duly carried out.² In general it seems that from the twelfth to the fourteenth centuries the sick and poor were cared for in a very efficient manner.

MODERN TIMES

With the disruption of the nursing orders in the sixteenth century there was no one to take any interest in the proper care of the sick poor and the maintenance of proper conditions in hospitals. As a result the care of the sick was more and more neglected. Naturally we find in this period no works specifically devoted to nursing ethics unless the rules of a few religious communities founded in these centuries might be considered as bearing on the moral problems of nurses.

¹ Léon Le Grand. Statuts d'Hôtels-Dieu. Paris: 1901. P. 40.

² See also: Léon Le Grand. Les maisons-Dieu et Léproseries du diocèse de Paris au milieu du XIV^e siècle d'après le registre de visites du délégué de l'évêque (1351-1369). Paris: 1899. Pp. cxxi + 309.

St. Vincent de Paul and his Sisters of Charity, as well as the older communities, prevented serious conditions in France. It was to the Sisters of Charity in Paris that Florence Nightingale went in 1853 to study nursing. When Great Britain, France and Turkey declared war on Russia in 1854, she pointed out that France had her Sisters of Charity, but England no one to take their place. It was not long before she was commissioned to take over the nursing of the English Army and went to Turkey. Out of that grew the modern movement which resulted in the trained nurse.

Miss Nightingale's writings abound in suggestions, statements and advice of an ethical character. The extract of her article on *Nursing the Sick* in Quain's Dictionary of Medicine (Edition of 1894) quoted by Nutting and Dock might well be put forward as an outline of the nurse's general moral ideal.

There is not nearly so rich a literature on ethics for nurses as on medical ethics. The annotated bibliography at the end of this chapter will give some idea of what has been done in this field.

A Code of Nursing Ethics. Various professions have formulated codes to govern the members of the official organization,¹ but a code of nursing ethics has not yet been officially adopted. A realization of the necessity for some kind of solution to the acute moral problems of the nurse has long been felt.

"Professional Ethics was made a matter of major importance at the Annual Conference of the Alumnae of

¹ For the text of these codes see: Benson Young Landis. *Professional Codes*. A sociological analysis to determine applications to the educational profession. Bureau of Publications, Teachers College, Columbia University. New York: 1927. Pp. xii + 108. Contains a selected annotated bibliography.

the Department of Nursing and Health of Teachers College." ¹

In 1926 a suggested code was presented to the American Nurses' Association, but it has never been officially adopted. Limbert advocates the formulation of such a code by proceeding along the same lines adopted in writing this text, that is, to find out from the nurses themselves a list of their actual moral problems. He then advocates determining the correct ethical solution of these problems by obtaining the decisions of a large number of nurses and administrators rather than by reasoning from fundamental principles. He thinks that there should be a permanent committee to act as a kind of supreme court for interpreting cases as they arise. He feels also that the code should have its sanction, that is, a real "mechanism of enforcement," although he does not suggest anything definite as to the nature of this mechanism.²

An editorial in *Hospital Progress* points out that the only effective sanction of such a code must come from the fact that it gives expression to the moral law.³ This is undoubtedly true. Still the American Nurses' Association might impose penalties, such as fines or expulsion, on its members for the infringement of the code, as the state penalizes various infringements of the moral law. Should a code, however, be formulated, it must be the reasoned expression of the natural law, applied to the problems of the nurse; and that has been precisely what was attempted in the present work.

¹ Professional Ethics. Some replies to a questionnaire. *Am. J. of Nursing*, 1922, 22, p. 885.

² Paul M. Limbert. Developing a code of ethics for the nursing profession. *Am. J. of Nursing*, 1932, 32, 1257-1263.

³ *Hospital Progress*, 1933, 14, p. 17.

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of ethics, but a valuable compilation of actual moral problems met with in nursing and suggestions as to the proper mode of dealing with them.

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CHAPTER 30

THE TEACHING OF ETHICS

The ultimate end of a course of ethics should be the clear formation of sound practical principles of conduct. Moral philosophy or ethics is only natural reason guiding us in the many issues of life both little and great. Frequently one has to act at once with little or no opportunity for thought. To be sure of acting reasonably in such critical moments one must have principles of conduct that one makes part of his very nature, so that in an acute moment demanding immediate action one, as it were reflexly, follows the course of action dictated by his moral principles.

One who has never crystallized his principles of conduct, and formally and willingly adopted them, is likely to be at a disadvantage. A course in ethics should help the student to remove any such disadvantage and free conduct from blind emotional drives and subject it to reason. This, after all, is the fundamental problem of morality: to dominate conduct by reason.

The present text is an attempt to present to the student a number of practical moral problems, to provide principles determining their solution, and to give some foundation in reason for the principles proposed for the solution of the problems.

In teaching the text, the author has found that students were in general capable of easily solving many of the problems, following the chapters, in accordance with the principles laid down in the text, that is, they could say: this or that should be done or that it was right or wrong. When it came to explaining the principle, that is to say, to give a clear reason why a course of conduct was wrong, many of

them experienced great difficulty or found it utterly impossible. It was still more difficult for them to give any reason why a principle, once it had been expressed, should be looked upon as true and reasonable.

Let us take an example, Problem 7 on page 37.

A nurse assisting at an operation contaminated one of her gloves. She told the supervisor, who was circulating, and she said: "That is nothing; nobody noticed it."

It takes very little insight for anyone to see that the nurse should at once have removed the contaminated glove and demanded another. But why? And the student answers: "Because she should have." But what principle governs your answer?

Let us look more closely at the problem. A nurse might say: Why make a fuss? Many patients overcome these little infections, or perhaps the patient will not be infected after all. In other words, the nurse goes ahead in ignorance of whether or not her work is going to lead to an infection of the patient and serious complications or death. On page 33 we find a statement:

"If a nurse hands a surgeon an instrument which she knows to be contaminated in an operation where an infection might well mean the life or death of a patient she is guilty of a grievous sin, because she becomes responsible for what there is good reason to suppose might result in the death of the patient."

There is good reason also to suppose that a contaminated glove will contaminate the instruments it touches.

A more general expression of the principle is given on page 34.

"Gravely culpable ignorance, that is, ignorance which should have been avoided and which the individual took no pains to correct, in no way diminishes guilt."

There was in this case no necessity of going on in igno-

rance of whether or not a contaminated glove would contaminate the patient. Such ignorance could have been removed by obtaining a sterile glove.

And why, one may ask, does culpable ignorance not excuse? All moral action involves "reason sitting in judgment on conduct."¹ When I foresee serious results are likely from my course of action, and in spite of the fact that I know the evil consequences of my act and could easily prevent such consequences by a different course of action, and willingly go ahead and follow the course of action which is likely to have evil consequences, saying to myself, I am ignorant of whether or not these consequences will really follow, such ignorance does not excuse me from having done what might well have injured another.

This leads to a more general principle: One is morally responsible for the good or evil that one can reasonably suppose will follow from one's actions.

Eventually all moral principles can be reduced to the first of all moral principles: I must do good and avoid evil. And in this principle the good is that which contributes to the true welfare of the individual or of humanity and evil is the opposite.

Many of our very simple problems will give adequate opportunity for a very wholesome exercise, if the student attempts to formulate a general principle governing his answer and then tries to demonstrate the principle. And should he call in question the principles we have laid down, let him realize that rational conduct must be governed by reasonable principles and let him formulate other principles, remembering however, that whatever principle he adopts must be such as to guarantee not only his own true welfare, but also by its general adoption by all men, contribute to the true welfare of humanity.

¹ P. 32.

Let us take as another example problem 9 on page 88.

A certain medication, due every hour, was ordered for an unconscious man. The nurse forgot to give it for three consecutive hours. What should she do? If she reported to the supervisor she would have her time taken away, it would go on her report at the end of the month; and the supervisor would not trust her again. The man had only very little chance of recovery. Should she chart the medication as given, or report it?

It takes very little ethical insight for anyone to promptly see that the nurse's plain duty was to report at once her failure to give the prescribed medication.

But what principle governs this answer? Here it is rather easy to state the principle, and the principle that comes to mind having been ingrained by early training is: Lying is wrong, but to report a medication as given when it was not given is a lie, therefore it is wrong.

One might ask would it really be a lie? The definition of a lie is given in principle 2, page 86.

A lie is a falsification through speech, writing, gesture or action, by which a man expresses one idea or intention but has another in mind.

If we ask why a lie is wrong, we have the discussion of the problem on page 83.

All lies are wrong because:

(a) They are unworthy of the dignity of human nature, and because

(b) They are an abuse of the function of speech, which must be a reliable means of communication between man and man for the welfare of the social order.

Honest charting of medications given, or not given, to an unconscious patient is a matter of more than trivial importance. Prompt reporting of one's negligence, or failure to report, might be a matter of life or death.

Let us suppose one should elect to say it would not be wrong for the nurse to chart the medication as given because of the consequences she might have to suffer if her negligence became known.

What principle would govern the answer? It would be formulated thus: Whenever unpleasant consequences are incurred by telling the truth, it is right to lie.

Now if we ask, why would it be right? the principle cannot be justified without adopting the standpoint that it is right for one to do anything to get out of trouble no matter how others may suffer from one's selfishness.¹ Could this principle be established, ethics would have to be supplanted by a set of suggestions teaching the student how to avoid the consequences of doing whatever he pleased to do in all circumstances.

But the function of ethics is to crystallize moral principles which will enable us to rise above all personal selfishness and to know the truth and attain to perfect wisdom and realize the moral ideal in our private life and in our dealings with others.

¹ For a discussion of this problem see pp. 290-329.

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